



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/EV/22/2755

Parties

RW & CM Singer (Applicant)

Miss Amy Mitchell (Respondent)

PKC Lets (Applicant's Representative)

92 Malvina Place, Perth, PH1 5FJ (House)

1. The application dated 8.8.2022 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) by email from the applicant's representative. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). Included with the application were a notice to leave dated 3.2.2022 served under ground 1 of schedule 3 of the Act and the S 11 notice

, the tenancy agreement showing only Mr Robert Singer as the landlord, as well as an email dated 8.8.2022 from Messrs McCash and Hunter that they had acted in the sale of the property and that the property had been sold.

2. The FTT wrote to the Applicants' agent on 9.9.2022 in the following terms: 1. The title sheet for the property show that it was purchased by Ian and Diane Smith in March 2022. This appears to be confirmed by the copy email submitted which states that the property has been sold. As Mr and Mrs Smith are now the owners and landlords of the property, please explain the basis upon which the Applicants have title and interest to make this application. 2. As the application has already been sold, please clarify the basis upon which the Tribunal could find ground 1 established as this applies if the landlord intends to sell or put the property on the market for sale. 3. If the application is to proceed, please explain why the Notice to leave was sent by email when the tenancy states that Notices must be served in hard copy.
3. On 23.9.2022 the Applicants' agent replied as follows: Good afternoon, In response to your letter. Please find the following details below: 1) When the tenancy began the tenant did not have access to a computer or phone to provide an electronic signature hence why the hand deliver box was ticked as the communication option. Having worked with the tenant for several years now both in this tenancy and previous tenancies I know she struggles with her mental health and suffers from high anxiety. It is for this reason I decided it would be best to speak to her regarding the Notice to Leave. She has been an excellent tenant. I thought this may soften the bad news. Prior to this most visits and repairs correspondence has been done via text and e-mail as she find this easier to work with. After speaking with her I mentioned that I would send on the Notice via e-mail along with some useful information for her to contact the local authority via e-mail, provide them with her NTL and request for an appointment with a housing options officer. I also reassured her if she had any questions or anything she didn't understand to let me know. I'm afraid I am unable to comment on the other points raised in your letter. At the time the notice to leave was issued to the tenant Mr and Mrs Singer were the legal owners of the property. I was aware they intended to sell the property but I was I wasn't aware that the ownership had changed prior to applying to the Tribunal for the eviction order.
4. The landlord registration shows Mr Richard Singer as registered landlord.
5. An enquiry with Registers of Scotland disclosed that the current owners of the property are a Mr and Mrs Smith. The title record shows the date of entry as 22.3.2022.
6. All documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

7. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

"Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

8. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

9. In terms of S 51 (1) of the Act "The First-tier Tribunal is to issue an eviction order against a tenant under a private residential tenancy if , on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies".
10. Rule 109 of the Rules of Procedure states: **Application for an eviction order**

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord;

(ii) the name, address and profession of any representative of the landlord;

(iii) the name and address of the tenant; and

(iv) the ground or grounds for eviction;

(b) be accompanied by—

(i) evidence showing that the eviction ground or grounds has been met;

(ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c) be signed and dated by the landlord or a representative of the landlord.

11. The notice to leave relied on ground 1 of schedule 3 of the Act.

12. It is clear from the email from Messrs McCash and Hunter and the title deeds available that the property is no longer owned by the Applicant Mr Richard Singer. Mrs Singer, the second named Applicant was not named as the landlord on the lease and was not registered as a landlord for the property at any stage. The former owner may have correctly served a Notice to Leave on ground 1 of schedule 3 of the Act in February 2022 before the property was sold. However, since the property changed ownership the previous owner no longer has title and interest to bring the application and is no longer the landlord of the property. The application is thus made by someone other than the landlord and does not fulfill the requirements of rule 109. S 51 (1) also clearly states that the application can only be considered by the FTT if made by a landlord.

13. It is surprising that the Applicants' agent states that it was not known that the property had been sold. The email from Messrs McCash and Hunter clearly stated this and the email was submitted with the application.

14. It would not be appropriate to accept the application as it has been made by someone other than the current landlord for the property. It is also clear that the ground as stated in the Notice to Leave and the application no longer applies since the property has been

sold already.

15. The application is thus rejected.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.



Petra Hennig McFatridge
Legal Member
20 October 2022