



**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/23/0774

**Parties**

**Mr Kashif Naeem (Applicant)**

**Ms Fiona Sweeney (Respondent)**

**1/1 40 Cherrybank Road, Glasgow, G43 2NQ (House)**

1. The application for an eviction order in terms of Rule 65 of the Procedural Rules was received by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) on 10.3.2023.
2. The documents lodged with the application were: a Private Residential Tenancy agreement for a tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) commencing on 1.8.2019, a notice to leave dated 30.11.22 with a date of raising proceedings on 25.2.23 and stating that the applicant wished to move into the property, an AT6 notice under the Housing (Scotland) Act 1988 (the 1988 Act)

stating as the reason for the notice that the applicant wished to move his 17 year old son into the property.

3. On 30.3.23 the FTT requested further information. A reply from the applicant on 31.3.23 advised the AT6 had been sent by email, the notice to leave by Whats App. He sent a copy of the S 11 notice he referred to, which was in fact a copy of the notice to leave sent to the tenant. The FTT wrote to the applicant again on 28.4.23 requesting the following information: “ 1. You have submitted a statement which states that you intend for your son to live in the property. That is ground 5 and not ground 4. If this is the case, please provide an amended application and notice to leave which has been served on the correct ground. 2. The application for refers to Rule 65. You have submitted a private residential tenancy and Notice to leave. Please confirm if you wish to amend to Rule 109. 3. Please provide evidence that the Notice to leave was sent. A screenshot of the message should be provided. 4. Please provide a copy of a section 11 notice in the prescribed format sent to the Local Authority with evidence that it was sent. You appear to have sent them the Notice to leave. “ No reply was received.
4. On 15.6.2023 the FTT again wrote to the applicant in the following terms: “ Please provide the information requested in the Tribunal’s letter to you of 28 April 2023. Please reply to this office with the necessary information by 29 June 2023. If we do not hear from you within this time, the President may decide to reject the application.” No reply has been received by 25.7.2023

## **DECISION**

1. 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."*

2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.

### **Relevant Legislation**

#### **Application for civil proceedings in relation to a private residential tenancy**

#### **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.

The lodging requirements for an application under rule 65 (b) include the requirements

to lodge the requirement to lodge (i) a copy of the tenancy agreement or as much information as the landlord can give in, (ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy in, (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable) and , (iv) evidence as the applicant has that the possession ground or grounds has been met and (v) a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003.

### **REASONS FOR DECISION**

3. The application was made under rule 65. The tenancy agreement provided is a PRT under the 2016 Act for which rule 109 would be the appropriate rule. An application can only be made either in terms of rule 109 or rule 65. As the applicant submitted a PRT document under the 2016 Act the FTT considers that the application is made under the wrong rule, rule 65, which pertains to applications under the 1988 Act. The applicant was asked to clarify this and has not provided a reply. The FTT considers that the applicant has failed to provide an application stating the correct rule. The FTT considers that the application has not been validly made under either rule for the following reasons:
4. S 56 of the 2016 Act specifically states “A landlord may not make an application to the First-tier Tribunal for an eviction order against the tenant unless the landlord has given notice of the landlord’s intention to do so to the local authority in whose area the let property is situated. Notice under subsection (1) is to be given in the manner and form prescribed under section 11 (3) of the Homelessness etc. (Scotland) Act 2003. “ The format and content of the S 11 notice is set out in the Notice to Local Authorities (Scotland) Regulations 2008 as amended. Similarly S 19A of the 1988 Act specifies that “the landlord shall give notice of the raising of the proceedings to the local authority in whose area the house is situated... Notice under subsection (1) above shall be given in the form and manner prescribed under section 11 (3) of the Homelessness etc. (Scotland) act 2003.”
5. As stated above, there are specific requirements to the form and type of information to be provided by the Applicant to the local authority to create a valid S 11 notice. The applicant in this case has not provided a S 11 notice which meets the specifications of either the 2016 or the 1988 Act. He only sent a copy of the notice to leave document to the local authority by email on 28.2.2023. The Tribunal wrote to the Applicant to raise the issue of the missing S 11 notice and gave the Applicant an opportunity to provide a S 11 notice. The Applicant has not done so.
6. The FTT considers that the required notice has not been provided and thus the requirement for a valid application set out in S 56 of the 2016 Act and S 19A of the 1988 Act has not been complied with. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. Also, in terms of rule 65 (b) (v), which is the rule stated on the application, the same notice is required. It has not been provided. The application does not fulfil the lodging criteria for an application of that nature in terms of rule 109 or rule 65 of the Procedure Rules. It would not be appropriate for the Tribunal to accept the application without said required notice.
7. The ground in the application and in the notice to leave was described as the landlord

wishing to move into the property, which relates to ground 4 of schedule 3 of the 2016 Act. The AT6 notice presented, which was dated later than the notice to leave, now refers to the applicant wishing his son to move into the property. This is also his statement in the undated letter to the FTT sent with the email of 31.3.2023. It is thus not clear which ground the application is based on. The FTT asked for clarification and no reply was received. One requirement for a valid application is that evidence is provided that the ground is met. Given that it is not clear which ground applies such evidence cannot be provided. The evidence, the undated letter, supports a ground not stated on the application. No evidence for the ground actually stated in the application was provided. This means that the requirement in rule 109 (b) (i) is not met. Equally this would apply to rule 65 (b) (iv). It would not be appropriate to accept an application without that requirement being met.

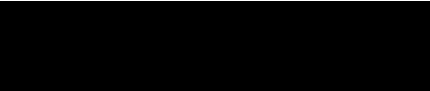
8. The application it is therefore rejected.

### **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  
25 July 2023