

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

2 Winton Park, Cockenzie, Prestonpans, EH32 0JN (the property)

Case reference FTS/HPC/EV/22/0709

Parties

Mrs Denise Breen (Applicant)

Miss Michelle Hogarth, Mr Neil Hartley (Respondent)

1. On 9 March 2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules and stated as the grounds applicable grounds 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
2. The only document lodged with the application was a Notice to Leave dated 17 August 2021.
3. In letters dated 11 March 2022, 7 April 2022 and 12 May 2022 the FTT requested further information from the applicant, in particular a copy of the S 11 notice and evidence of the grounds stated. The applicant was advised that the application was incomplete. The date for a reply stated in the last letter of the FTT was 19 May 2022.

No reply has been received.

4. The documents lodged by the applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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.

REASONS FOR DECISION

1. The lodging requirements for an application under rule 109 include the requirements to lodge evidence showing that the eviction ground or grounds has been met (rule 109 (b) (i) and a copy of the notice given to the local authority under S 56 (1) of the 2016 Act (rule 109 (b) (ii)).
2. The documents required in terms of rule 109 (b) I and ii were not provided, despite the FTT having requested these on 3 occasions. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a 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 situation and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003.
3. Because the documents necessary to lodge an application in terms of rule 109 were not provided it would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements.
4. The applicant had been given 3 opportunities to lodge the missing documents and provide further details and has failed to do so.
5. The application is accordingly 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

1 June 2022