



**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/22/2477

Parties

Mr Stewart Cook (Applicant)

Miss Christina Robinson (Respondent)

7 Brannock Place, Newarthill, Motherwell, ML1 5DX (House)

1. On 22 July 2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable ground that the landlord wished to move into the property, which reflects ground 4 of schedule 3 of the 2016 Act.
2. The Applicant also indicated on the form that the application is made under rule 65 of the Procedure Rules and S 18 of Housing (Scotland) Act 1988 (the 1988 Act). The

FTT registered the application under two case numbers and allocated to the application under rule 65 case number EV/22/2475 and to the application under rule 109 number EV/22/2477.

3. The application was accompanied by a Notice to Leave document dated 20.3.2022 giving the date in part 4 as 20.6.2022. No S 11 notice, no tenancy agreement and no evidence regarding ground 4 as suggested in ground 4 (4) of schedule 3 of the 2016 Act were provided.
4. In letters dated 23.8.2022, 4.10.2022 and 23.11.2022 the FTT requested further information from the Applicant, in particular clarification which rule should be used, a copy of the tenancy agreement or relevant details, the S 11 notice including the required information and evidence of this having been given to the local authority, evidence of the ground being met and information regarding the joint property owner. The date for a reply stated in the last letter of the FTT was 7.12.2022. On 7.11.2022 the Applicant had provided his landlord registration, which had also been requested and promised further documentation to be sent by the end of that week. No further information was received at the time and thus the last request for further information of 23.11.2022 issued. No reply has been received to this last request.
5. 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

6. 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."

- 7. 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 requirement to lodge a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act in (b) (iii) and evidence to show the eviction ground has been met in (b) (i).
2. 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 situated 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. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents. No affidavit as suggested in ground 4 (4) of schedule 3 of the 2016 Act was included. Despite having requested the

relevant documents and clarification of which rule the application should be registered under these documents still have not been produced.


3. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements.
4. 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.



Legal Member
19 December 2022