



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/EV/22/4433**

**Re: 0/2 61 Merryland Place, Glasgow, G51 2NA ("the Property")**

**Parties:**

**Stuart Macdonald ("the Applicant")**

**Debbie Kelly ("the Respondent")**

**Tribunal Member:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.**

**Background**

1. The application was received by the Tribunal under Rule 109 on 16<sup>th</sup> December 2022, with accompanying documents.
2. The application was considered by a Legal Member of the Tribunal with delegated powers of the Chamber President and by letter dated 16<sup>th</sup> January 2023, the Applicant was informed that further information was required as follows:

Before a decision can be made, we need you to provide us with the following:

1. Please consider the information on the attached letter regarding The Cost of Living (Protection for Tenants) (Scotland) Act 2022 and provide a reply with your position on the matter.

2. Please provide evidence of how and when the notice to leave was given to the tenant.

3. Please provide the S11 notice to the local authority previously requested in the letter of 20 December 2022 and evidence of how and when the S 11 notice to leave was given to the local authority.

4. Please provide evidence that the ground is met. The legislation Ground 1 (3) states:” (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)— (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property, (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.” In light of the description of the work required you may also wish to consider the ground carefully as the ground actually refers to the intention to put the property up for sale within 3 months of the tenant ceasing to occupy it. If you envisage that the repairs to the property may take longer than that period the ground may not be established. You may wish to obtain independent legal advice.

Please reply to this office with the necessary information by 30 January 2023. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

3. The application was considered by two further Legal Members of the Tribunal with delegated powers of the Chamber President and by emails dated 16<sup>th</sup> February and 27<sup>th</sup> March 2023, further opportunities were provided to lodge the required information, failing which the application may be rejected. No response was received.

4. The application was considered by a Legal Member of the Tribunal with delegated powers of the Chamber President on 27<sup>th</sup> April 2023.

### **Reasons for Decision**

5. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;-*

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

*(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. The Tribunal has requested further information from the Applicant in order to consider whether or not the application can be accepted. The Applicant has failed to respond in full to the Tribunal's request for further information and documents.
7. In particular, the Applicant has failed to provide
  - (i) Evidence that the Notice to Leave was served upon the Respondent, including evidence of the date of service. It is impossible to ascertain whether the requirements of section 62(4) and (5) of The Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") have been met in terms of the notice period.
  - (ii) The notice required by Rule 109 of the Procedure Rules, as provided for in section 56 of the 2016 Act:

#### **56 Restriction on applying without notifying local authority**

- (1) A landlord may not make an application to the First-tier Tribunal 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.
- (2) 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 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. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 66 of the Procedure Rules and the requirements stated in the 1988 Act as set out above.

- (iii) Evidence showing that the eviction ground has been met, which must be lodged in terms of Rule 109 before an application can be accepted.

8. There is good reason to believe that it would not be appropriate to accept the application for the reasons set out above. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

**Helen Forbes**

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**Legal Member/Chair**

**27<sup>th</sup> April 2023**  
**Date**