



**Decision with Statement of Reasons of Karen Moore, 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 (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/1277**

**Re: Property at 17 Briarcroft Place, Glasgow, G33 1RF (“the Property”)**

**Parties:**

**Mrs Karen Colville-Walker (“the Applicant”) residing at 26, Kirkview, Condorrat, Cumbernauld, G67 4EH per her agents, K Property, 12 Ettrick Square, Town Centre, Cumbernauld North Lanarkshire, G67 1ND (“the Applicant’s Agents”)**

**Suraj Salhotra sometime at the Property (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (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).

### **Background**

1. The application was received by the Tribunal under Rule 66 on 21 April 2023.
2. The application was considered by the Tribunal and further information was requested by email of 19 May 2023 as follows: *“1. Please provide proof of service of the Notice to Leave and AT6 form by way of a track and trace report. When the Tribunal tried to verify the date the Respondent actually received the notices it appeared from the post office website that the documents were returned to sender and were not in fact delivered to the tenant. Please note that you require to supply this information within one week to establish whether the application met the requirements for a complete application at the date the effect of the AT6 notice expired. As you will be aware, in terms of S 19 (7) of the Housing (Scotland) Act 1988 an AT6 notice can only be used to make an application to the Tribunal for 6 months after the date when proceedings could first have been raised. The date stated on the AT6 notice was 10.11.2022 and thus the notice cannot be relied on to make an application after 10.5.2023. However, as your last reply to a further information request was dated 21 April 2023, providing the information which led to this request for further information, please reply so that the Tribunal can determine whether the application was in fact complete before the expiry of the AT6 notice. In*

*the absence of a reply or in the event that the notices were in fact not served successfully on the Respondent the application would have to be rejected. 2. 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."* A partial response was received by email on 19 May 2023.

3. The further information, being proof that the statutory Section 33 Notice had been properly served on the Respondent, was requested again by email on 15 June 2023 and on 4 August 2023. The Applicant via her agent was advised that lack of response might mean that the Application would be rejected in terms of Rule 8 of the Rules. No response was received to the emails of 15 June 2023 and 4 August 2023

#### **Reasons for Decision**

4. 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."*
5. Rule 66 of the Rules provides that an application for an eviction order must be accompanied by proof that the statutory Section 33 Notice has been given to the tenant. In this case the Applicant has failed to provide the required documentation. The Tribunal cannot grant the application without this information.
6. The Tribunal consider that there is good reason why the application cannot be accepted. Accordingly, the application is 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.**

**Karen Moore**

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**Legal Member**

**Date**

**29 August 2023**

