



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Rules")**

in connection with

34 Doon Place, Kirkintilloch ("the Property")

Case Reference: FTS/HPC/EV/21/0415

Andrew Shylshen, 2 Jay Avenue, Newton Flotman, Norwich ("the Applicant")

Stuart Barbour, 34 Doon Place, Kirkintilloch ("the Respondent")

1. By application received on 22 February 2021, the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The application form specifies eviction grounds 11 and 12. The Notice to Leave submitted with the application only specifies ground 12.
2. On 18 March 2021, the Tribunal issued a request for further information to the Applicant. The Applicant was directed to provide evidence of service of the Notice to leave. He was also asked whether the joint owner of the property should be a joint applicant and asked to provide a notice to leave for ground 11 or confirm if the application was to proceed on ground 12 only. No response was received. Two further letters were issued to the Applicant directing him to respond to the letter requesting further information or the application may be rejected. No response has been received.

DECISION

3. The Legal Member considered the application in terms of Rule 8 and 5 of the Chamber Procedural Rules. Rule 5 provides:-

“(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “

- 4. After consideration of the application and supporting documentation, the Legal Member considers that the application should be rejected in terms of Rule 8 (1)(c), namely that the Legal Member has “good reason to believe that it would not be appropriate to accept the application”. The basis for this is that the Applicant has failed to comply with Rule 5.**

Reasons for Decision

5. The Applicant submitted an application for an eviction order in terms of Rule 109 of the Procedural Rules. Section 52(3) of the 2016 Act requires an application to be accompanied by a Notice to Leave which has been given to

the tenant. The Notice to Leave which has been submitted does not refer to ground 11. The Applicant has therefore failed to comply with Section 52(3). Furthermore, the Applicant has failed to provide evidence that the Notice lodged was “given” to the Respondent. On 18 March, 15 April and 4 May 2021, the Tribunal wrote to the Applicant, directing the Applicant to provide information and documentation. The Applicant has failed to respond or provide the required information or documents.

6. The Applicant has not provided a Notice to Leave, as required by Section 52(3) for one of the eviction grounds specified in the application. The Applicant has also failed to provide evidence of service of the Notice to Leave. Furthermore, the Applicant has failed to provide information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis. .

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.

J.B.

Josephine Bonnar, Legal Member
24 May 2021