



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,  
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  
10 Gosford Road, Kirkcaldy Fife, KY2 6TZ ("the Property")**

**Case Reference: FTS/HPC/EV/21/1671**

**Mr David Grierson and Mrs Denise Grierson, 2 The Holdings, Tower Grove,  
Perth, PH2 7JX ("the Applicants")**

**Mr Paul Reid and Mrs Catherine Reid, 10 Gosford Road, Kirkcaldy Fife, KY2 6TZ  
("the Respondents")**

**BACKGROUND**

1. The Applicants submitted an application to the Tribunal on 5<sup>th</sup> July 2021 seeking an order of possession of the Property. The application was made under Rule 65 of the Rules which would therefore be in terms of Section 18(1) of the Housing (Scotland) Act 1988. The Applicants subsequently stated that they would want the application to be considered under Rule 109 which would be in respect of an eviction order under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016. On 10<sup>th</sup> August 2021, the Tribunal requested information from the Applicants. It asked for details of the tenancy agreement and clarification as to the required notice given to the Respondents. The Respondents were asked to furnish evidence in relation to their intention to live in the property and also to provide evidence that the appropriate notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been served on

the local authority. The Applicants were also asked to consider whether they wanted the application to be under Rule 65 and, if so, to provide evidence of service of a Notice to Quit and form AT6. The Tribunal's letter of 10<sup>th</sup> August 2021 advised the Applicants that, if the necessary information were not received by 24<sup>th</sup> August 2021, the President may decide to reject the application. On 11<sup>th</sup> August 2021, the Applicants emailed the Tribunal and advised that they intended to instruct a solicitor. No further information has been received from the Applicants or any solicitor instructed by them.

## **DECISION**

2. The Legal Member considered the application in terms of Rule 5 and Rule 78 of the Rules and Section 21 of the Rent (Scotland) Act 1984 which is the relevant statutory provision in an application under Rule 78. 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. “

3. **After consideration of the application the Legal Member considers that**

**the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 78 and Section 21 of the 1984 Act.**

## **REASONS FOR DECISION**

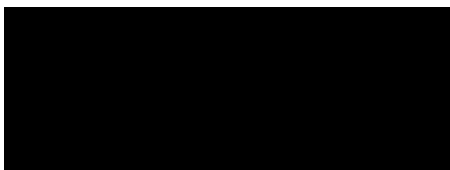
4. The Applicants refused to comply with the Tribunal’s request for further information to be provided and the fundamental issue which the Applicants have not addressed is whether or not the application is under Rule 65 or Rule 109. The Notice to Leave which was produced by the applicants stated that the Respondents have lived in the Property since 2012 and, if that is correct, the tenancy agreement cannot be a Private Residential Tenancy under the 2016 Act. If the tenancy agreement is an assured tenancy then the Applicants have produced no evidence of the required notices which would require to be given on seeking an order of possession of a property subject to such a tenancy.

### **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.



Martin J. McAllister, Legal Member  
8<sup>th</sup> September 2021