



**DECISION AND STATEMENT OF REASONS OF MELANIE BARBOUR, 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 references FTS/HPC/EV/22/3084; FTS/HPC/EV/22/1739; FTS/HPC/EV/22/2481

Parties

Ms Ruth Brown (Applicant)

Ms Sharon Bell (Respondent)

30 Lethen Walk, Portlethen, Aberdeen, AB12 4TX (House)

1. On 9 June 2022, 25 July 2022 and 29 August 2022 three applications were received from the applicant. The applications were all made under Rule 109 of the Procedural Rules, being applications for eviction of a private residential tenancy. Each application related to the same tenant and the same property.
2. By letters from the Tribunal dated 30 June, 7 July, 23 August, 29 September, 5 October, 16 and 30 November all 2022 the Tribunal requested further information in relation to the three applications. The applicant responded in part to the further information requests, however as at 6 January 2022 the following information was still outstanding:-
 1. It is noted that you wish to proceed with the eviction case. You do not specify which case you wish to proceed. You have lodged three separate applications with the tribunal and you have

failed to deal with a number of requests for information seeking to clarify which of these applications you wish to proceed.

2. You have also failed to answer fully the tribunal's previous requests for information regarding the method of service of notices upon the tenant and the validity of them.
 3. It is now noted from your most recent emails that your tenant appears to have vacated the property. Can you consider the terms of section 50(1) of the Private Housing (Tenancies) (Scotland) Act 2016 which deals with consensual termination of a private residential tenancy and advise the tribunal why you still need any order from the tribunal.
 4. If it is still your position that you wish to proceed to seek an eviction order, then you require to provide the tribunal with an up-to-date address for the tenant to enable the tribunal to serve appropriate papers upon her.
 5. In the absence of such an address you will require to apply to the tribunal to have notice of the application served on the tenant by means of advertisement on the tribunal website. That will require you to complete an application for service by advertisement and lodge that with the tribunal.
 6. Please note that the application under reference EV/22/1739 bears to proceed on a notice which includes grounds for which an appropriate period of notice was not given. Please advise the tribunal the basis upon which such a notice is competent.
 7. With regard to the application under EV/22/2481 this seems to proceed on the basis of the same notice served in relation to application EV/22/1739. Again please advise the appropriate basis upon which this application can proceed. You also indicated the notice in this application was served by email.
 8. Please provide the appropriate authority for service of this notice by email. We would refer you to section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 which deals with the method of service of notices.
 9. If you wish to proceed on the application EV/22/3084 we note that you have been advised by the tribunal to provide submissions on whether the period of notice which you have given is valid and effective. Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 and particularly sections 54(2), 62(4) and 62(5) of that Act and confirm whether the NTL meets the requirements of those sections (with particular regard to the required period of notice to be given to a tenant and the date upon which the landlord expects to become entitled to make an application to the tribunal) and whether it should be regarded as valid.
3. The Tribunal also advised the applicant that it will not proceed with three separate applications all bearing to be based upon the same ground for eviction; and if they wished an application to proceed then they required to provide answers to the matters contained

in this letter and previous letters and to indicate which of the applications you wish to proceed.

4. The applicant has failed to respond to the last further information request and the foregoing issues remain outstanding.

DECISION

5. I have considered the applications 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."

6. After consideration of each application, the attachments and correspondence from the applicant, I consider that each application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

7. The Tribunal had requested further information to support this application from the applicant. The applicant has not provided the information requested.
8. The applicant's failure to provide the requested information to support the application gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unable to do so in order to progress this application under rule 109.
9. Accordingly, for this reason the application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.

Melanie Barbour
Legal Member
6 January 2023