



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 reference FTS/HPC/EV/23/2893

**Parties**

**Mr Allan MacLeod (Applicant)**

**Mr Frazer Doogan, Ms Hannah Shepherd (Respondent)**

**Flat 0/2 45 Dalmarnock Drive, Dalmarnock, Glasgow, G40 4LS (House)**

1. The application dated 23.8.2023 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on that date. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). Included with the application were a notice to leave dated 30.11.2022 and a copy of the tenancy agreement but no S 11 notice as required in terms of S 56 of the Act and no evidence regarding the grounds stated in the application. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 23.2.2023 and the explanation was given that the notice was hand delivered on 30.22.2022 and also emailed on that day.
2. On 24.8.2023 the FTT requested further information from the applicant, in particular evidence that the ground had been met and a copy of the S 11 notice together with proof

of service. On 8.9.2023 the applicant replied and stated "Until the tenant is evicted or moves out I can provide evidence of neither selling or moving in. There are other grounds now, including refusal to accommodate or allow entry for repairs and willful damage to the property fittings which I have evidence of. However despite reading much legislation I am unable to find out if any such grounds can be included for this order or would require a fresh notice to quit." The applicant also included a S 11 notice and email correspondence showing that the S 11 notice was not sent to the Local Authority until 24.8.2023.

## **DECISION**

3. I considered the application 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."*

4. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

## **REASONS FOR DECISION**

5. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S55 *“(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.(2)In subsection (1), “the relevant period” has the meaning given in section 54(2).(3)The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).”*
6. The notice to leave lodged with the application relied on ground 1A and ground 5 of schedule 3 of the 2016 Act and was dated 30.11.2022. S 54 (2) states for a notice under grounds 1A or 5 of schedule 3 a notice period of 84 days. The date entered into part 4 was 23.2.2023. In order for the notice to be valid in terms of S 62 (4) one had to accept that the notice had been served personally on 30.11.2022, which is what was stated by the applicant. Had one based the service on the email sent on 30.11.2022, the entry in part 4 would have been incorrect as in terms of S 65 (5) two days would have to be added in the calculation and this would have taken the date of expiry of the notice to 24.2.2023 and the notice to leave would thus have been invalid. Accepting the statement of the applicant, the notice period of 84 days thus expired on 22.2.2023 and the date of 23.2.2023 in part 4 was thus correctly calculated. The notice to leave as such was valid.
7. In terms of S 55 the landlord may not make an application to the FTT for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired. The period is to be calculated in terms of S 54 (2). That period was 22.2.2023. The date six months after the notice period expired was thus 23.8.2023 and to be valid an application would have had to have been made to the FTT on or before that date.
8. Whilst the application was received on 23.8.2023, in terms of Rule 5 (3) of the Rules of

Procedure an application is held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

9. In terms of S 56 of the Act and rule 109 (b) (iii) of the Rules of Procedure one of the documents necessary to make an application under S 51 of the Act is “a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act”. The documentation provided shows that the applicant did in fact not complete and send the required notice to the local authority until 24.8.2023, which is a day after the period stated in S 55 (1) expired. In terms of S 56 he could not have applied for an eviction order prior to sending the S 11 notice to the local authority and the application lodged on 23.8.2023 was not only incomplete but could not have been competently made on that day because at that time no S 11 notice had been sent to the local authority .
10. The application could not have been validly made by the expiry of the 6 months period due to the S 11 notice not having been completed and sent within that time period. A valid application could not have been made within the time period stated in S 56 and it would not be appropriate for the FTT to accept an application in those circumstances.
11. The application is rejected.

### **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.**



Petra Hennig McFatridge  
Legal Member

15 September 2023