



**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/22/1660

Parties

RCP Properties (Applicant)

Miss Amy Gallagher (Respondent)

RCP Properties (Applicant's Representative)

85 Cochrane Street, Bathgate, EH48 4JF (House)

PROCEDURAL BACKGROUND:

1. The application under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was received by the First-tier Tribunal (FTT) on 30.5.22.
2. The following documents were ultimately lodged in connection with the application:- S 11 Notice to Local Authority with service by email, Notice to Leave dated 5.4.22 with

confirmation of service email on that day, correspondence from the Applicant to the Respondent regarding antisocial behaviour.

3. The First-tier Tribunal (FTT) wrote to the Applicants' representative on 27.6.22 in the following terms: *1. Please provide a copy of the tenancy agreement. 2. You state that the Applicant is RCP Properties, however, ownership and landlord registration are in the name of Romano Pacitti. Please provide an explanation as to how RCP Properties has title and interest to raise this application. If the name of the Applicant is to be changed to that of the owner, please provide an amended page of the application form, also including the Applicant's address, which cannot be the address of their representative. 3. Please provide written authorisation from the Applicant authorising you to make the application on their behalf. 4. Please provide an explanation as to the origin of the document entitled 'Police Reports' – is this a document drawn up by the Applicant? You do not appear to have provided any evidence of the ground of eviction, such as police incidence reports, diaries, statements or correspondence from those affected by the alleged behaviour, or from the local authority, if they have been involved. Rule 109 requires you to lodge evidence showing that the ground has been met. Furthermore, it is not clear how you would intend to evidence this at a case management discussion or subsequent hearing, if no evidence is available. Please provide your written representations in this regard, and any existing evidence.'*
4. On 19.7.22 the Applicant's representative replied and asked for the application to be put on hold as she was unable to produce any evidence from neighbours due to their fear of retribution. The email did not address any of the other requests for further information.
5. The FTT again wrote on 11.8.22 asking for the application to be completed and for a reply to be made by 25.8.22. There was no reply to the last correspondence from the FTT .
6. The documents are referred to for their terms and held to be incorporated herein.

DECISION

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."

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 Tribunal has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION:

Findings and Reasons:

1. The Applicants seek an order under S 51 of the Act and made the application under Rule 109 of the Rules of Procedure. In order for the FTT to accept the application the

Applicant must show title and interest to make the application. The Applicant in this case is not the same person or legal entity as the registered landlord and the owner of the property. The property is owned by an individual, who is also the registered landlord. The application is made in the name of a company. The FTT asked for further information regarding the relationship between the company and the owner of the property, for a copy of the tenancy agreement and for evidence of the authorization of the agent on behalf of the Applicant. None of this was provided. In the circumstances it would not be appropriate for the FTT to accept the application, as title and interest to make the application by the Applicant has not been evidenced.

2. Furthermore, it is the responsibility of Applicants to ensure that all documents and evidence necessary to make a valid application are submitted. In terms of Rule 5 (3) of the Rules of Procedure an application is held to be made on the date that the FTT receives the last of any outstanding documents necessary to meet the required manner for lodgment. To date the application is thus not properly made.
3. The agent asked for the application to “be put on hold”. It is not clear for what purpose or why the information requested could not be provided immediately. It relates to the position of the Applicant, owner and agent and thus should be within the knowledge of those making the application. In light of the lack of response and the lack of evidence disclosing the title and interest of the Applicant in making the application it would not be appropriate for the FTT to accept the application. It cannot be held open indefinitely without the cooperation from the Applicant. For the above reasons the application has to be rejected.
4. The Applicant is advised that there is nothing to prevent the application being raised afresh once the necessary information is available. The Applicant may wish to consider obtaining legal advice in the matter.

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

Petra Hennig McFatridge
Legal Member
22 September 2022