



**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/22/2297

**Parties**

**Mr Khurram Kamal (Applicant)**

**Mr Mosleh Rahimnezhad (Respondent)**

**1 Robson Grove, Flat 6, Glasgow, G42 7PN (House)**

1. The application dated 8.7.2022 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 9.7.2022. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). Included with the application were a notice to leave dated 2.3.21 and the S 11 notice. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 3.9.2021.
2. On 12.7.2022 the FTT requested further information from the applicant regarding the

tenancy agreement and other documentation. Furthermore on 14.9.22 the FTT wrote to the applicant in the following terms: "Thank you for your recent response. We have noted however that you are relying on a Notice to leave that appears to be dated and was sent on 2nd March 2021 and gave notice to the tenant to leave by 3rd September 2021. In terms of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 a Landlord may not make an application for eviction against a tenant using a copy of a Notice to leave more than 6 months after the date on which the relevant period in that Notice expired. It would appear that the Notice to leave that you have submitted cannot be used to form the basis of a competent application. Please advise if you have a subsequent notice to leave and please submit that along with proof of service or please advise why you believe this application is competent with reference to the Act. if you wish to withdraw this application and reapply, if necessary, when you have served a further notice and have evidence to support it then please confirm your intention in writing. Please let us have your response within 14 days failing which it is likely this application will require to be rejected"

3. On 20.9.22 the applicant replied: "I have submitted the tenant fresh eviction notice and i will inform Glasgow council by submitting section 11 form. I can apply HPC 16/12/2022 but I prefer keep current application in process if rules allow me to do so or otherwise I will make fresh application. " A Notice to Leave based on ground 5 of schedule 3 of the 2016 Act and dated 20.9.22 with a date on which proceedings could first be raised stated as 16.12.22 was submitted without proof of service and without evidence for the ground applying having been included.

## DECISION

4. 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."*

5. 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**

6. 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)."*
7. The notice to leave lodged with the application relied on ground 12 of schedule 3 of the 2016 Act and was dated 2.3.212021.
8. S 54 (2) applicable to notices to leave served after 3 October 2020 then sets out the relevant notice periods. For a notice to leave relying on ground 12 of schedule 3 of the Act the notice period relevant at the time was 6 months.

9. S 64 of the Act defines a 6 months period as a period "*which ends in the month which falls six months after the month in which it began, either – (a) on the same day of the month as it began, or (b) if the month in which the period ends has no such day, on the final day of that month.*"
10. The FTT considers that the expiry date of the notice period for the notice to leave was 2.9.22, namely 6 months after the notice to leave had been received by the tenant by service via Sheriff Officers. 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 date six months after the notice period expired was 2.3.2022 and to be valid an application would have had to have been lodged with the FTT on or before that date. The application was made on 9.7.22 and thus more than 6 months after the expiry of the notice period of the notice to leave dated 2.3.21.
11. The application based on the notice to leave dated 2.3.21 is thus rejected in terms of S 55 of the Act.
12. The applicant has provided a further notice to leave dated 20.9.22 but no evidence is provided that the new ground, ground 5 of schedule 3 of the Act applies. There is no S 11 notice relating to the new notice to leave and the ground of the application lodged dated 20.9.22 has changed from ground 12 to ground 5. At present the FTT considers that the new documentation does not constitute a valid application because it does not meet the lodging criteria and it is premature, the notice to leave stating that proceedings cannot be raised prior to 16.12.22.
13. The application is thus rejected in so far as it relates to the new notice to leave also.
14. If the applicant wishes to raise a fresh application in future he is reminded to ensure that an application will require the applicant to lodge all relevant documents as set out in rule 109 of the rules of procedure if and when that application is made.

### **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.



Legal Member  
18 October 2022