



**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

**2 The Square or 2 Stables Cottage, Sunderland Hall, Galashiels, TD1 3PG ("the
Property")**

Case Reference: FTS/HPC/RP/22/0086

Mrs Sarah Edwards ("the Tenant")

Mr Richard Smyly ("the Landlord")

1. The Tenant submitted an application to the Tribunal dated 24th December 2021 which was received on 12th January 2022. The application was in terms of Section 22 (1) of the Housing (Scotland) Act ("the 2006 Act"). The application showed that the Tenant was not residing at the Property at the time the application was made. The Tenant stated that she had left the Property on 27th November 2021.

DECISION

2. The Legal Member considered the application in terms of Rule 5 and Rule 43 of the Chamber Procedural Rules. 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 48 and Section 22(1) of the 2006 Act.**

REASONS FOR DECISION

4. The Tenant’s application is in terms of Section 22(1) of the 2006 Act and Rule 48. The 2006 Act allows a tenant to make such an application. The Tenant stated that the tenancy was terminated on 27th November 2021, almost a month prior to the submission of the application.
5. The Tenant’s application is not competent because she was not a tenant in terms of the 2006 Act when she made the application. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

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
7TH February 2022