



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/EV/23/4054**

**Parties:**

**Martin McNally ("the Applicant")**

**Sara Jane McGowan ("the Respondent")**

**Tribunal Member:**

**H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.**

**Background**

1. An application for an eviction order was made under Rule 109 on 14<sup>th</sup> November 2023 and lodged with associated documentation.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant requesting the following information on 21<sup>st</sup> December 2023 as follows:

Before a decision can be made, we need you to provide us with the following:

- You have not provided the proper Notice to Leave on the required form as required in terms of the legislation. If you have not served this upon the Respondent, please withdraw the application and serve a proper Notice to Leave ensuring the correct period of notice is given, and the notice is served by an accepted method. Service of a Notice to Leave cannot be made by posting through the letterbox. You may wish to take advice on this matter.



You should also be aware of the following:

- The grounds of eviction mentioned in the application form do not correspond to those in the Private Housing (Tenancies) (Scotland) Act 2016, but seem to have been taken from the Housing (Scotland) Act 1988, which is not appropriate for a Rule 109 application. The grounds in the application form must mirror those in the Notice to Leave.
- We would require to see the tenancy agreement.
- We do not request documents from a third party.
- There is no evidence of landlord registration.
- You have not provided a copy of a section 11 notice as required by the legislation, together with evidence of service.

Please reply to this office with the necessary information by 4 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

3. By email dated 5<sup>th</sup> February 2024, the Applicant was given further opportunities to provide the requested information. No response was received.
4. The application was considered by a Legal Member on 11<sup>h</sup> March 2024.

### Reasons for Decision

5. The Tribunal considered the application in terms of Rule 8 of the Chamber 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 ...*

*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes*

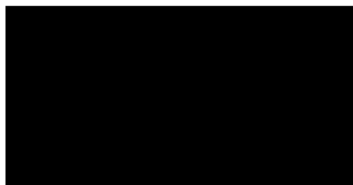


*a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."*

6. The Applicant has failed to provide a copy of a valid Notice to Leave as required in terms of section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant has failed to provide a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act. Copies of both documents are required in terms of Rule 109 of the Procedural Rules before an application can be accepted.
7. There is good reason to believe it would not be appropriate to accept the application. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**



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**Legal Member/Chair**

**11<sup>th</sup> March 2024**

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**Date**