



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

Case Reference: FTS/HPC/EV/23/2381

31 McClelland Crescent, Dunfermline ("the Property")

Sharon McNicoll, Cameron House, Blairadam, Kelty, Fife ("the Applicant")

Amber Beveridge, 31 McClelland Crescent, Dunfermline ("the Respondent")

1. The Applicant lodged an application for an order for possession of the property in terms of Rule 65 of the Procedure Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). An AT6 notice and Notice to leave were submitted in support of the application in response to a request from the Tribunal.
2. The Tribunal issued a number of requests for further information and documents. The Tribunal asked the Applicant to provide a copy of the tenancy agreement and to clarify whether the application was to proceed under Rule 65 or if it should be amended to Rule 109. Although the Applicant responded, and provided a number of other documents, she did not provide a copy of the tenancy agreement or clarify whether the tenancy is an assured tenancy under the 1988 Act or a private residential tenancy under the 2016 Act. The Applicant also failed to provide a copy of the section 11 notice with evidence that it was sent to the Local Authority. The Applicant was notified that if she failed to respond to the Tribunal and clarify the position regarding the tenancy, the application may be rejected. On 6 November 2023, the Applicant submitted a further application form which refers to Rule 109.

Decision

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.”

Reasons for Decision

4. Rule 5 of the Procedure Rules states that 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...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
5. The application was lodged in terms of Rule 65 and the section 18 of the 1988 Act. The Applicant failed to lodge a copy of the tenancy agreement or a Notice to Quit which has been served on the Respondent. The Applicant submitted a Notice to leave and AT6. These documents indicate that the tenancy started in 2020. If so, it appears that the tenancy may be a PRT and is therefore subject to the provisions of the 2016 Act and Rule 109. The Notice to leave is incomplete as there is no date specified in Part 4 and the Applicant has also failed to provide evidence of service on the Respondent. On 6 November 2023, the Applicant submitted a new application form which refers to Rule 109. However, she again failed to provide a copy of the tenancy, information about the tenancy, a valid Notice to leave with evidence of service or a copy of a section 11 notice sent to the Local Authority. The Applicant has also failed to provide these documents when directed to do so in terms of Rule 5(2) and (3) of the Procedure Rules
6. The Applicant has failed to comply with Rules 5 and either Rule 65 or 109 of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. 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.

Josephine Bonnar

21 November 2023