



**DECISION AND STATEMENT OF REASONS OF FIONA WATSON, 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

9 Ingleston Place, Dumfries, DG1 3DF ("the Property")

Case Reference: FTS/HPC/EV/26/0041

**David Crosbie, 6557 Crystal Springs Drive, San Jose, CA95120, USA ("the
Applicant")**

1. The Applicant seeks an order for repossession of the Property in terms of Rule 109 of the Rules. The Applicant lodged the following document with the application:
 - (i) Notice to Leave and evidence of service
 - (ii) Tenancy agreement
 - (iii) Section 11 notice and evidence of service
 - (iv) Rent statement

DECISION

2. The Legal Member 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;

(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.

3. After consideration of the application and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Rules.

Reasons for Decision

4. An email was sent to the applicant on 7 March 2026 seeking further information from the Applicant and in particular highlighted the following:
 - (i) *The notice to leave (NTL) based on ground 12 appears to be dated 11 November 2025. For that notice to be valid on that ground, the tenant must have been in arrears for three consecutive months at that date, i.e. since on or before 11 August 2025. It is the length of time that arrears have existed which*

is crucial not the amount of arrears involved.

The rent statement you have provided seems to suggest that that your tenant had no rent arrears on 4 September 2025 and then entered into arrears on or after 1 October 2025. If so, your tenant would not have been in arrears for three consecutive months until 1 January 2026 at the earliest. Is this correct?

We would refer you to the Upper Tribunal decisions in the cases of Rafique v Morgan (2022) UT 07 and Majid v Gaffney (2019) UT 59. These Upper Tribunal decisions considered whether it is competent for a notice to leave to be served before a tenant has been in arrears for that required period of three consecutive months. The decisions confirmed that a notice to leave cannot be served until a tenant has been in arrears consecutively for a period of three months. The amount of the arrears has no bearing on it. The crucial element here is the period of time during which of the arrears have existed consecutively. This tribunal is bound to follow decisions which interpret relevant legal provisions issued by the Upper Tribunal, unless you can persuade a tribunal that the Upper Tribunal cases are wrongly decided. On what basis can the tribunal proceed if the ground you intend to rely upon did not exist at the date you say the NTL was served.”

5. The applicant responded by email of 27 March 2026 stating “I have...attached the rental statement showing the 3 months arrears last year...”
6. A further email was sent to the applicant on 2 May 2026 seeking further information from the Applicant and in particular highlighted the following:
 - (i) *“The rent statement supplied...indicates that the rent was not three months in arrears at the date of service of the notice to leave on 11 November 2025. Please provide your submission as to the validity of the notice to leave in these circumstances.”*
7. The Applicant responded to the email on 13 May 2026 stating “*please find attached, again, the rental statement showing the tenant was 4 months in arrears by the start of January 2026.*”
8. A further email was sent to the applicant on 2 June 2026 seeking further information from the Applicant and in particular highlighted the following:
 - (i) *You have still not properly responded to the query contained in our e-mail to you dated 7 March 2026. In that e-mail we indicated to you that the notice to leave (NTL) based on ground 12 appears to be dated 11 November 20255. In order for that notice to be valid on that ground, the tenant must*

have been in arrears for three consecutive months at that date, i.e since on or before 11 August 2025. It is the length of time that arrears have existed which is crucial not the amount of arrears involved. The rent statement you have provided seems to suggest that that your tenant had no rent arrears on 4 September 2025 and then entered into arrears on or after 1 October 2025. If so, your tenant would not have been in arrears for three consecutive months until 1 January 2026 at the earliest. Is this correct?

We would again refer you to the Upper Tribunal decisions in the cases of Rafique v Morgan (2022) UT 07 and Majid v Gaffney (2019) UT 59. These Upper Tribunal decisions considered whether it is competent for a notice to leave to be served before a tenant has been in arrears for that required period of three consecutive months. The decisions confirmed that a notice to leave cannot be served until a tenant has been in arrears consecutively for a period of three months. The amount of the arrears has no bearing on it. The crucial element here is the period of time during which of the arrears have existed consecutively. This tribunal is bound to follow decisions which interpret relevant legal provisions issued by the Upper Tribunal, unless you can persuade a tribunal that the Upper Tribunal cases are wrongly decided. On what basis can the tribunal proceed if the ground you intend to rely upon did not exist at the date you say the NTL was served.

Please explain the basis upon which this application can proceed given that your notice to leave was apparently served on 11 November 2025 at which point the tenant had not been in arrears for a period of three consecutive months. The fact that the tenant has thereafter failed to pay any additional rent does not remedy this matter.

5. The Applicant failed to respond to said email of 2 June 2026. A further email was sent to the applicant on 13 July chasing a response. No response was received. A further email was sent to the applicant on 17 August again chasing a response.
6. By email of 18 August, the applicant responded stating “*I have submitted all rental statements, showing 3 consecutive months in arrears, emails between the tenant and us showing the communication issues. I am not sure what else is needed, the landlords are keen to resolve this matter as the tenants’ payments are sporadic and not regular.*”
7. The Applicant has failed to substantively respond to the issue raised regarding the timing of service and competency of the Notice to Leave. The Tribunal is satisfied that the Notice to Leave is incompetent, having been served prematurely. The Upper Tribunal decisions in the cases of Rafique v Morgan (2022) UT 07 and Majid v Gaffney (2019) UT 59 confirm that it is not competent for a notice to leave to be

served before a tenant has been in arrears for the required period of three consecutive months. A notice to leave cannot be served until a tenant has been in arrears consecutively for a period of three months.

8. The Notice to leave in this application was served on 11 November 2025. There would therefore require to have been arrears in existence for a continuous period of three months prior to that date. Accordingly, for the Notice to Leave to be competent, there must have been arrears in existence since on or before 11 August 2025 and continuously to 11 November 2025, to satisfy that three-month requirement. This was not that case here. The rent statement shows that there was a zero balance on the rent account as at 4 September 2026 following a payment being made. New arrears then accrued on 1 October 2025 in the sum of £495. As at 11 November 2026, the arrears increased to £990. There had not been a continuous arrear on the rent account for a period of 3 months prior to the Notice to Leave being served. Whilst it can be seen from the rent statement lodged that the tenant has been sporadic in their rent statements, with the rent account going in and out of arrears over time, it is the period of 3 months leading up to the date of service of the Notice that is critical. There must have been a continuous arrear for that entire period, in order to be able to serve a Notice to Leave competently on ground 12. That requirement has not been satisfied here, and therefore the Notice to Leave is incompetent, having been served prematurely. The application therefore cannot succeed.

9. The Legal Member therefore determines 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.

Fiona Watson
Legal Member
10 September 2026