



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER  
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE  
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

**4F Aurs Road, Barrhead, Glasgow, G78 2RN**

**Case Reference: FTS/HPC/EV/22/0142**

**Mrs Susan Hoppe 21 Gleniffer Drive Barrhead (Applicant)**

**Mr Lee McGregor 4F Aurs Road Barrhead, Nichola Alford 1b Oakbank Drive  
Barrhead (Respondent)**

1. On 19<sup>th</sup> January 2022, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for eviction of the Tenant by the Landlord. The Applicant was seeking eviction in terms of Ground 4 she wished to sell the Property and originally only named the first named Respondent.
2. The Applicant lodged a copy of a Notice to Leave addressed to the first named Respondent, and a copy of the S11 notice to the local authority.
3. The Tribunal requested further information from the applicant by e-mail dated 8<sup>th</sup> February 2022. The Tribunal asked for the following information in respect of this application:-
4. *Before a decision can be made, we need you to provide us with the following:*  
"1. Please provide a copy of the tenancy agreement.

2. Please provide evidence of service of the Notice to leave. If this was sent recorded delivery, please provide the post office certificate of posting and a track and trace report confirming delivery.
3. Please provide evidence that the section 11 notice was sent to the Local Authority.
4. Please provide evidence in support of the eviction ground, such as a copy of the home report or contract with the selling agent.
5. Please provide evidence of landlord registration.”
5. The Applicant responded on 18<sup>th</sup> February 2022 providing details of her landlord registration number; a copy e-mail confirmation of the section 11 notice and a copy of the certificate of posting and track and trace receipt for the notice to leave which shows it was sent on 18<sup>th</sup> January 2021 and received on 19<sup>th</sup> January 2021, terms of business for the sale of the Property from MSM solicitors; letter from the second named respondent who wishes to take her name off the tenancy and copy tenancy agreement showing both Respondents as joint tenants in a tenancy commencing on 29<sup>th</sup> April 2018.
6. The Tribunal wrote again to the Applicant on 8<sup>th</sup> March 2022 asking *“I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: An application for an eviction order has to be made against all tenants. You have indicated that the joint tenant gave notice to end her tenancy. A private residential tenancy can only terminated by all of the joint tenants. One tenant cannot end their tenancy (see clause 23 of the agreement). Please confirm if you wish to amend the application to include the joint tenant, and provide contact details. Please also provide a copy of the notice to leave which has been served on her, with evidence of service. You may wish to take legal advice before you respond Please reply to this office with the necessary information by 22 March 2022. If we do not hear from you within this time, the President may decide to reject the application.”*
7. The Applicant responded as follows *“With regards to the requested information please could you kindly forward the following reply: 2 Unfortunately when Miss Alford left the property on 10th December 2018 she did not leave any forwarding address. I do not know of her whereabouts now. When seeking to gain possession of my property the Notice to Leave was sent to the only remaining tenant Mr McGregor as he was the only resident living there. I can only ask that you please consider that I have been as flexible as I could and*

*gave the tenant 6 months after the Notice to Leave had expired to find another property before applying for possession. Thank you for your time”.*

The Applicant’s representative has admitted that she has not served a notice to leave on the Second respondent who is the joint tenant in a private rented tenancy. The Tribunal wrote again saying “*As previously notified to you, an application for an eviction order has to be made against all tenants. You have indicated that the joint tenant gave notice to end her tenancy. A private residential tenancy can only be terminated by all of the joint tenants. One tenant cannot end their tenancy (see clause 23 of the agreement). It is noted that you have not served notice to leave on the second tenant. It would seem, therefore, that the application cannot proceed as it stands. Please let us know if you wish to withdraw the application and resubmit it when you have served notice to leave on the second tenant. As mentioned previously, you may wish to take legal advice on this matter. Please reply to this office with the necessary information by 28 April 2022. If we do not hear from you within this time, the President may decide to reject the application.*”

8. The Applicant responded again advising she did not have forwarding address for the second respondent and asking what she could do to serve a notice to leave. The Tribunal responded by saying that if she did not have an address she could apply to serve the notice to leave by advertisement but this would require an application to be made and evidence that the respondent could not be traced by either a tracing agent or sheriff officer and the tribunal pointed out there would then have to be an application for eviction using that notice to leave. Given the issues the Applicant was asked if she wished to withdraw her application and resubmit after serving two notices to leave as the original one to the first named Respondent may now be out of time. The Applicant was recommended to seek her own legal advice The Applicant requested further time to respond and then replied substantively on 13<sup>th</sup> July 2022 with an address for each of the Respondents.

## **9. DECISION**

10. I considered the application in terms of Rule 5 and 8 of the Procedural Rules.

Those Rules provide:-

11.

*"Rejection of application*

*Rule 5 (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 lodgement 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

*(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

*(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.*

*(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.*

*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."*

12. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

## **REASONS FOR DECISION**

13. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-  
*"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".* It is that definition which I have to consider in this application in order to

determine whether or not this application is frivolous, misconceived, and has no prospect of success.

14. The applicant has lodged only one notice to leave which has been served on the first named respondent on 18<sup>th</sup> January 2021 which was received by the first named Respondent on 19<sup>th</sup> January 2021. In terms of S55 of the Private Housing (Tenancies) (Scotland) Act 2016 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 6 months after the day on which the relevant period on the notice to leave expired. The Notice expired on 21<sup>st</sup> July 2022 and therefore expired on 21<sup>st</sup> January 2022. An application for eviction must be accompanied by a Notice to leave which has been given to the Tenant and that notice must be valid. The Notice is not currently valid and cannot be relied upon in this application. In addition no Notice to Leave has been served on the second tenant who is the Second Respondent and this is required to end the tenancy against both tenants. In the absence of a notice to leave served on the second tenant and a notice to leave that has exceeded 6 months from the relevant date for the first Respondent this application has no prospect of success. In the circumstances I consider that this application is misconceived and has no hope of success therefore it must be rejected.
15. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.
16. The Applicant has now an address for both tenants and it would be open to her to serve the relevant notices, with the revised timescales now in force and reapply for an order for eviction if she so wishes enclosing two valid notices to leave.

### **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.

# Jan Todd

Jan Todd  
Legal Member  
8<sup>th</sup> August 2022