



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

**68 Aikman Place, East Kilbride, G74 3JN (the property)**

**Case Reference: FTS/HPC/EV/20/1453**

**Lorne Campbell ("the applicant")**

**Gavin Boyd ("the respondent")**

1. On 2 July 2020 the applicant lodged an application for an eviction order in terms of Rule 109 of the Procedural Rules with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) .
2. The documents lodged with the application were: copy Notice to Leave, copy tenancy agreement commencing 15 February 2018, email correspondence relating to the request of the respondent to receive the Notice to Leave in paper form.
1. On 28 July 2020 the Tribunal wrote to the applicant as follows: “ *Before a decision can be made, we need you to provide us with the following: • Please provide us with a copy of the signed tenancy agreement. • Your application makes reference to Ground 8 but it appears that it is actually Ground 12 of Part 3 of Schedule 3 of The Private Housing (Tenancies) (Scotland) Act 2016 that you seek to rely on. If that is the case, please amend your*

*application. • It is appreciated that details of rent arrears are provided within the application but please provide us with a rent statement. • In terms of 56 (1) of the 2016 Act a landlord may not make an application for an eviction order without giving the appropriate notice to the relevant local authority of his/her intention to do so. The appropriate notice is to be given in the manner and form prescribed under Section 11 (3) of the Homelessness etc. (Scotland) Act 2003. Please provide us with a copy of the notice and evidence that it has been delivered to the local authority. Please reply to this office with the necessary information by 11 August 2020. If we do not hear from you within this time, the President may decide to reject the application. “*

2. No reply was received.
3. On 7 September 2020 the Tribunal again wrote to request the information stated above.
4. No reply was received.

## **DECISION**

1. I considered the application in terms of Rule 8 of the 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."*

2. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

### **Relevant Legislation**

#### **Application for civil proceedings in relation to a private residential tenancy**

#### **Application for an eviction order**

**109.** Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction ground or grounds has been met;

(ii)a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c)be signed and dated by the landlord or a representative of the landlord.

### **REASONS FOR DECISION**

3. No Notice to the local authority as required by s 56 of the 2016 Act was supplied.
4. The Notice to Leave enclosed was referred in part 2 to the ground stated as ground 12 in schedule 3 of the Private Housing (Scotland) Act 2016 (the 2016 act). The application was made under "Ground 8" and no clarification was provided.

5. Further information had been requested by the Tribunal on 2 occasions and no reply had been received providing the requested information and documentation.
6. The Applicant was clearly advised that the application was incomplete and that the application may be rejected unless the documentation and information requested is provided.
7. In terms of S 52(2) of the 2016 Act *"The Tribunal is not to entertain an application for an eviction order if it is made in breach of - ..(b) any of sections 54 to 56..."* S 56 (1) of the 2016 Act states *"A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated"* , it would not be appropriate for the Tribunal to accept the incomplete application.
8. The required notice has not been provided.
9. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. This was not provided.
10. The Tribunal had given the Applicant ample opportunity to provide documents and information which would cure these defects. The applicant did not have the courtesy to either reply with the required further information or to withdraw the application.
11. Given that the application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules and the documents lodged do not confirm that a notice in terms of s 56 (1) of the 2016 Act was issued it would not be appropriate for the Tribunal to accept the application.
12. The application it is therefore rejected.

### **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.**

# **P.H McF**

Petra Hennig McFatridge

Legal Member

6 October 2020