



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

Ref: FTS/HPC/EV/21/0474

Re: 126 Neilston Road, Flat 1/2, Paisley, PA2 6EP ("the Property")

Ms Madhu Jain 22 Seafield Avenue, Bearsden, G61 3LB ("the Applicant")

**Castle Residential, 63 Causeyside Street, Paisley, PA1 1YT ("the Applicant's
Representative")**

Mr Juozas Kavaliukas 126 Neilston Road, Flat 1/2, Paisley, PA2 6EP ("the Respondent")

DECISION

**It was determined by the Legal Member acting under the delegated powers of the
Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the Application must be
rejected in terms of Rule 8(1).**

REASONS

- 1. On 2 March 2021 an application was received from the Applicant's Representative ("the
Application"). The Application was made under Rule 109 of the 2017 Rules, being an
application for an eviction order in relation to a private residential tenancy. The Applicant
attached a number of documents.**
- 2. An application made in terms of Rule 109 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 (if known); and
 - iv. The ground or grounds for eviction;
- b. And 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 tenancy as required under section 52(3) of the 2016 Act; and
 - iii. A copy of the notice given to the local authority as require under section 56(1) of the 2016 Act; and
 - iv. A copy of Form BB ... (if applicable).
- c. Be signed and dated by the landlord or a representative of the landlord.

3. The Applicant's Representative submitted an incomplete application as it was not accompanied by all of the required documents.
4. On 15 March 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant's Representative, as follows:

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

- 1. The copy of the Notice to Leave is incomplete. The second page is missing. Please provide a complete copy.*
- 2. You have provided a certificate of posting. Please provide proof of receipt of the Notice to Leave.*
- 3. Please provide proof of service of the section 11 Notice on the local authority.*
- 4. The Notice to Leave is dated 10 December 2019. It specifies that eviction proceedings will not be initiated before 24 February 2020. Please provide your comments on the validity of this Notice in light of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 which provides "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 six months after the day on which the relevant period in relation to that notice expired." The notice period appears to have expired on 24 August 2020.*

Please reply to this office with the necessary information by 29 March 2021. If we do not hear from you within this time, the President may decide to reject the application."

5. The Applicant's Representative failed to respond to the request for further information.
6. On 9 April 2021, a further request for the said information was sent to the Applicant, in the following terms:

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

- 1. Please provide the information requested in the Tribunal's letter to you of 15 March 2021.*

Please reply to this office with the necessary information by 23 April 2021. If we do not hear from you within this time, the President may decide to reject the application."

7. On 30 April 2021, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.
8. Rule 8 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."

9. After consideration of the Application, the attachments and the repeated further information requests, it was determined that the requirements for making an application under Rule 109 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 109. The Applicant's Representative has failed to respond to the tribunal's further information requests. The Applicant has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

10. What you should do now

a. If you accept the Legal Member's decision, there is no need to reply.

b. 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.

S.T.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

30 April 2021