



**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

Case reference FTS/HPC/EV/23/1690

Parties

Mr Surjit Chowdhary (Applicant)

Miss Kirsty Gillies, Miriam Culver-Dodds, Heather Beer, Phoebe Ashworth (Respondent)

Castle Residential (Applicant's Representative)

Flat 5 1/1 Derby Street, Glasgow, G3 7TJ (House)

1. The application was made on 25.5.2023 to the First-tier Tribunal (the FTT) under rule 109 and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) using ground 17 of schedule 3 of the Act.
2. Various documents were provided with the application including a copy of the HMO license showing that this expired on 31.7.2022. However, no evidence that the HMO license had been revoked was submitted with the application.
3. The FTT wrote to the Applicant on 29.7.2023 requesting further information by 12.8.2023

in the following terms: “2. Please provide evidence that the HMO License was revoked under either S 139 (1) or S157 (2) of the Housing (Scotland) Act 2006. This is not the same as a license expiring. In order for the ground to apply the HMO license has to have been revoked by the local authority. You have only provided evidence that an existing license has expired. You may wish to take legal advice on the matter.

4. On 8.8.2023 the agent replied: “2. The HMO Licence expired unfortunately and this was the only ground relevant to HMO purposes. Please find attached a copy of the licence and expiry date July 2022. As the licence expired, the tenancy could not continue on this basis until the new HMO licence is received. “
5. On 6.9.2023 the FTT again wrote in the following terms: “2. As previously advised, ground 17 only applies if the HMO license has been revoked or renewal has been refused. If the landlord has simply allowed the license to expire, the ground does not apply. Please provide evidence that the license has been revoked or that the landlord has applied for renewal and this has been refused. If neither apply, you must withdraw the application or proceed on a different ground and submit a notice to leave on that ground which has been given to the tenants. “
6. On 14.9.2023 the applicant’s representative replied as follows: “As there was no other suitable ground regarding HMO, we sought guidance for this as it was the case with a similar property and this case was accepted for hearing and this was the ground that we were advised to select by our obligatory body. I hope that this can be accepted, the same way a similar hearing for another HMO property was accepted. “
7. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

8. 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."

9. 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.

REASONS FOR DECISION

Relevant Legislation

Rules of Procedure:

Rule 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 [\[F72\]](#) (if known); 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

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

Private Housing (Tenancies) (Scotland) Act 2016

Ground 17 schedule 3

17(1) It is an eviction ground that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006 ("the 2006 Act").

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) under section 139(1) or 157(2) of the 2006 Act, the HMO licence for the let property has been revoked, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

1. The application is made on ground 17 of schedule 3 of the Act and an application of that nature would require to be accompanied, in terms of rule 109 (b) (i), by evidence that the ground is met.
2. The applicant's representative had been advised on two occasions that an expired HMO license, which is the only documentation regarding ground 17 which has been lodged, does not provide evidence that the ground has been met. The FTT referred in two emails to the requirement in ground 17 (2) (a) of schedule 3 of the 2016 Act that "under section 139 (1) or 157(2) of the 2006 Act, the HMO license for the let property has been revoked." The ground is referred to in the index of schedule 3 of the 2016 Act as "HMO license has been revoked". The Explanatory Notes for the 2016 Act clearly also refer to ground 17 as "House in Multiple Occupation (HMO) license revoked by the local authority". The Explanatory Notes at paragraph 80 further explain the intended construction of the grounds in schedule 3 of the Act as follows: "*80. [Section 51](#) provides a power for the Tribunal to issue an eviction order against a tenant when a landlord makes an application and the Tribunal finds that one of the eviction grounds named in schedule 3 applies. The Tribunal can only find that an eviction ground named in schedule 3 applies in the circumstances in which the schedule states that the Tribunal may or must find that the ground applies. The Tribunal cannot find that an eviction ground applies by considering only the name assigned to the ground by the first sub-paragraph of the relevant paragraph of schedule 3.*" Thus in order to determine whether a ground applies, the Tribunal has to look to subsection (2) of the ground to establish the definition of the test for the respective ground. Ground 17 (2) (a) of schedule 3 requires the HMO license to have been revoked in terms of either S 139 (1) or S 152 (2) of the Housing (Scotland) Act 2006. The expiry of a previously existing HMO license would not constitute evidence in terms of subsection (2) (a) of ground 17.
3. No evidence to suggest that the HMO license had been revoked in terms of s 139 or s 157 of the Housing (Scotland) Act 2006 Act had been provided with the application.
4. The FTT had raised this matter with the applicant's representative repeatedly and had thus given them the opportunity to provide the necessary documentation. This has still

not been provided. It would not be appropriate for the FTT to accept an application that does not meet the lodging requirements of rule 109 (b) (i) of the Rules of Procedure.

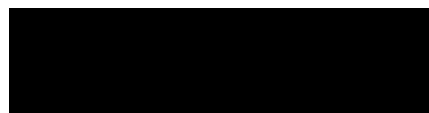
5. The application is accordingly rejected.

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.



Petra Hennig McFatrige

Legal Member

5 October 2023