



**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

139 Cameron Crescent, Bonnyrigg EH19 2PH

Case Reference: FTS/HPC/EV/20/1881

**Michael Smith ("the applicant")**

**Kirsty Skeldon ("the respondent")**

1. The application under Rule 109 of the Procedural Rules was made to the First-tier Tribunal for Scotland Housing and Property Chamber (the Tribunal) on 4 September 2020.
2. The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
3. The application was lodged with the following documents: Notice to Leave dated 1.6.2020 with a date for raising the application stated in part 4 as 3.9.2020 on ground 1, S 11 notice and email serving same, Home Report dated 3.6.2020. The documents referred to above are referred to for their terms and held to be incorporated herein.

4. The Notice to Leave is dated 1.6.2020 and in terms of Part 4 of the Notice to Leave the first day on which proceedings can be raised with the First tier Tribunal Housing and Property Chamber is stated in the Notice to Leave as 3.9.2020.
5. The ground/s of eviction referred to in the Notice to Leave and the application is/are:
6. In part 3 of the application it is stated: Your landlord intends to sell the property
7. No further evidence or explanation was provided with the notice.
8. The title deeds checked by the Tribunal show as the proprietors the applicant and a Mr Lindsay Margaret Yuill.
9. The landlord registration for the property is in the name of L + M Properties.
10. On 10.9.2020 the Tribunal wrote to the applicant asking for further information. The letter asked for a copy of the Tenancy Agreement, authorisation from the joint owner, and in particular evidence of how and when the Notice to Leave was served and an explanation as to why the Tribunal should be able to accept the application at this point, setting out in detail the changes in the notice periods for Ground 1 of Schedule 3 of the 2016 Act by the Coronavirus (Scotland) Act 2020.
11. The request from the Tribunal gave the applicant until 24.9.2020 for a reply and advised that the application may be rejected if no reply is received by that time.
12. The documents lodged and the case correspondence are referred to for their terms and held to be incorporated herein.

## **DECISION**

13. 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."*

14. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

## **REASONS FOR DECISION**

Relevant legislation:

**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

S 52 of the Act states: Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

15. In this case the Notice to Leave to the respondent was dated 1.6.2020.

16. The applicant failed to provide evidence that the Notice to Leave was validly served. The Tribunal requested this information and no answer was provided.

17. Furthermore, even if one considered that the Notice to Leave was served, the application would be premature. As set out in the request for further information, the notice period for Ground 1 of Schedule 3 of the 2016 Act has been amended to a period of 6 months by paragraph 2 of Schedule 1 of the Coronavirus (Scotland) Act 2020.

18. Even although it cannot be established exactly when the Notice to Leave was served, it could not have been served prior to 1.6.2020 when it was signed. The date to be entered in part 4 of the Notice to Leave taking into account a 6 months period stated in the amended S54 of the 2016 Act for Ground 1 of Schedule 3 of the Act thus would at the earliest be 2.12.2020 if the Notice to Leave was personally served on 1.6.2020 or, if it was served by email or recorded delivery in terms of S 62 (5) of the 2016 Act, 4.12.2020.

19. Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 states "Where a notice to which this paragraph applies is completed without taking proper account of

paragraphs 1 to 9 (a) the notice is not invalid by reason of that error, but (b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.”

20. The Notice to Leave is not invalid solely on the basis that the notice period was calculated wrongly, but the Tribunal still cannot entertain the application until the date on which it could be relied on had it been correctly calculated, in this case at the earliest 2.12.2020.
21. The Tribunal further gave the applicant the option to make representations as to why it should be possible to rely on the notice at this stage. S52(4) of the 2016 Act states that the Tribunal may allow an application during the notice period if it is reasonable to do so, however, no representations were received to ask the Tribunal to consider this.
22. The correct notice period has not yet expired. The Tribunal was not provided with any representations as to why S 52 (4) of the 2016 Act should apply in this case. The application is thus premature.
23. For the reasons stated above the application was not validly made. The Tribunal cannot entertain the application. The application is 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 Hennig-McFatridge**

Petra Hennig McFatridge

Legal Member

14 October 2020