



**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/23/0377

Parties

Dr Mortiar Rahman (Applicant)

Mr Scott Barr (Respondent)

MML Law (Applicant's Representative)

PROCEDURAL BACKGROUND:

1. The application was made under Rule 109 of the Procedural Rules, which relates to eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) and was received by the First-tier Tribunal (FTT) on 7.2.23. Rule 109 was indicated on the application form by the box next to it having been ticked by the Applicant's agents.
2. The following documents were ultimately lodged in connection with the application:- a paper apart setting out the background of the application, a letter from the letting agent to the Respondent dated 3.12.21, a notice document dated 26.10.22, a rent statement dated 1.12.21, an email from the Sheriff Clerk in Dundee Sheriff Court dated 21.11.22 and copy title document ANG32622. In the paper apart under no 4 the agent refers to a crave

for an eviction/possession order. On the application in part 5 the Applicant's agent stated that the order requested is under rule 111 "application for civil proceedings in relation to a private residential tenancy."

3. The FTT wrote to the Applicants' representative on 1.3.23 in the following terms: The Tribunal does not appear to have jurisdiction to deal with this case as it does not arise from a tenancy – in fact, it is asserted that no tenancy exists. Please either withdraw the application or provide your written submissions as to why you consider this Tribunal has jurisdiction. No reply was received. The FTT wrote a further reminder letter on 4.4.23 asking for a reply by 18.4.23. No reply was received.
4. The documents are referred to for their terms and held to be incorporated herein.

DECISION

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."

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:

Findings and Reasons:

5. The letters from the FTT specifically contained the following information: "If we do not hear from you within this time, the President may decide to reject the application. "The Applicant's agent was asked repeatedly to address the FTT further within specific time limits and no further representations were provided within the periods stated by the FTT. There was no attempt by the Applicant or his agents to set out on what basis the application may be made other than under Rule 109, no clarification why the application is made under Rule 109 and then refers to an order under Rule 111 and no attempts were made by the Applicant's solicitors to address the concerns of the FTT regarding jurisdiction.
6. Furthermore, it is the responsibility of Applicant to ensure that all documents and evidence necessary to make a valid application are submitted. In terms of Rule 109 (b) (ii) and (iii) the production of a Notice to Leave in terms of S 52 (3) of the Act and of a S 11 Notice to the Local Authority in terms of S 56 (1) of the 2016 Act are required to accompany the application. Neither document was submitted. The letter of 26.10.22 giving the Respondent 24 hours to vacate the property does not fulfill the requirements of a Notice to Leave as defined in S 62 of the Act as it did not give a notice period stated in S 54 of the Act, did not state an eviction ground in terms of schedule 3 of the Act and was not made on the appropriate form providing the required information to the recipient as necessary in terms of S 64 (1) (d) in conjunction with Schedule 5 of The

Private Residential Tenancies (Prescribed Notices and Forms)(Scotland) Regulations 2017 as amended. It is understandable that these documents were not submitted if the Applicant's position is that there is no PRT between the parties. However, that does not affect the lodging requirements, if the Applicant wishes to make the application on the basis of Rule 109.

7. If the application was made under Rule 111, which is referred to in part 5 of the application, again this would require evidence of a link to a PRT. Rule 111 refers to proceedings under S 71 of the Act and S 71 refers to "civil proceedings arising from a private residential tenancy". The paper apart does not specify any PRT as the PRT to which the matter relates. It is not clear if the previous tenant did hold a PRT and no information about that tenancy is provided. The information given about the current arrangement is explicitly that there is no PRT and that the Respondent is residing in the property without a lease. The application does not meet the requirement in Rule 111 (b) (i) of evidence to support the application.
8. The Applicants seek an order relating to a PRT. In part 5 of the application, which invokes Rule 111, reference is specifically made to "application for civil proceedings in relation to a private residential tenancy". The Applicant's representative states repeatedly and explicitly that there is no Private Residential Tenancy (PRT) between the Applicant and the Respondent. This statement is not consistent with an application under rule 109 or under Rule 111. No PRT document has been submitted and no explanation provided as to which PRT the matter would relate to. The FTT asked for further clarification but received no reply to these repeated requests.
9. On the basis of the information provided with the application, the FTT considers that it would not be appropriate to accept the application for the following reasons:
 - a) Given the lack of reply to the Tribunal's requests for further information despite the information that this may result in a rejection of the application, the FTT considers that the Applicant is no longer insisting on the application and clearly not prepared to provide further information.
 - b) The application in its current state does not fulfill the lodging criteria of an application under rule 109 as it does not meet the requirements stated in rule 109 (b) (ii) and (iii) as set out above or under rule 111 as the paper apart specifically states that there is no PRT in place.

- c) The Tribunal considers that in order to be able to deal with an application under rule 109 or 111, the application must be made on the basis that a PRT exists. Rule 109 relates only and explicitly to applications under S 51 of the Act. Rule 71 also relates only to proceedings arising from a PRT. The application clearly specifies that no tenancy under the Act exists. The application refers on the one hand to Rule 109 and in the same document asks for an order under rule 111. There is no clarity about what specific order the Applicant is seeking and under which rule the application is actually to be made. On both the matter of the rule on which the application is based and the legal basis on which the application is made the application is thus in itself inconsistent.

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-McFatridge

Legal Member

25 May 2023