

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF 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

147 Sundrum Place, Pennyburn, Kilwinning, KA13 6SY

Case Reference: EV/19/3915

**Mrs Mary Lannigan, t/a 3Ladsrenting, 14 School Place, Ardrossan, KA22 8PU
("the Applicant")**

**Ms Sharon Nicoll, 147 Sundrum Place, Pennyburn, Kilwinning, KA13 6SY
("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 9 December 2019, an application was received from the Applicant ("the Application"). The Application was made under Rule 109 of the 2017 Rules, being an application for an eviction order under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The following documents were enclosed with the Application:-**

- a. Paper Apart, which continued Section 5 of the Form but also included reference to Rule 66 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and a request to the tribunal to email the Applicant in order that she could provide missing documents.
2. The documents required to accompany an application under Rule 109 and Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) were not lodged with the Application, namely:
 - (b)(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 ...”*
3. On 11 December 2019, the Application paperwork was considered by a legal member of the tribunal with delegated powers of the Chamber President. The legal member determined, in terms of Rule 5 of the 2017 Rules, that the Application had not been lodged in the manner set out in Rule 109 of the 2017 Rules. The legal member requested further documents from the Applicant in accordance with Rule 5(3) of the 2017 Rules.
4. By letter of 11 December 2019, the Tribunal informed the Applicant that the following further information was required from her before her Application can proceed to the Chamber President for consideration:
 - a. *“You have listed documents in the required documents section of the application form which have not been provided with the original paperwork. Please provide this documentation.*
 - b. *Evidence showing that the eviction ground or grounds has been met.*
 - c. *A copy of the Notice to leave given to the tenant as required under Section 52(3) of the 2016 Act.*
 - d. *Evidence that the copy of the Notice to Leave given to the tenant as required under Section 52(3) of the 2016 Act has been served.*
 - e. *A copy of the notice given to the local authority as required under Section 56(1) of the 2016 Act.*
 - f. *Evidence that the notice to the local authority under Section 56(1) of the 2016 Act has been served to the local authority.”*

5. The Applicant was asked to reply to the tribunal's office with the necessary information by 18 December 2019, otherwise the Application may be rejected.
6. The Applicant did not provide the required information within the time stipulated.
7. On 26 December 2019, the Applicant sent an email to the tribunal attaching the following:
 - a. A "Tenancy Agreement Short Assured" between Mrs Mary Lannigan 3Ladsrenting" and Ms Sharon Nicoll dated 29 April 2019;
 - b. A Form AT6 dated 19 September 2019;
 - c. A Section 33 Notice dated 21 August 2019;
 - d. A Bank of Scotland standing order mandate;
 - e. A Form with tenant's details;
 - f. Documentation from and to the local authority in relation to Housing Benefit and Universal Credit payments;
 - g. Private Residential Tenancy agreement (signed by landlord 3 August 2019 and not signed by tenant); and
 - h. A bank statement.
8. On 27 December 2019, the information submitted by the Applicant, although late, was considered by a legal member of the tribunal with delegated powers of the Chamber President. The legal member determined, in terms of Rule 5 of the 2017 Rules, that the Application still had not been lodged in the manner set out in Rule 109 of the 2017 Rules. The legal member requested further documents from the Applicant in accordance with Rule 5(3) of the 2017 Rules.
9. By letter of 6 January 2020, the Tribunal informed the Applicant that the following further information was required from her before her Application can proceed to the Chamber President for consideration:
 - a. *"We note that the tenancy appears to have commenced on 29 April 2019. While the original tenancy agreement states that it is a short assured tenancy it is not possible to create new short assured tenancies after 1 December 2017.*
 - b. *The grounds for repossession listed on your Application, namely grounds 2, 11, 13, 14, 15 and 16 appear to relate to the repossession grounds*

listed in Schedule 5 to the Housing (Scotland) Act 1988 which applies to assured tenancies.

- c. In addition, you have provided a copy of an AT6 which is a notice under section 19 of the Housing (Scotland) Act 1988 of your intention to raise proceedings for possession but only in relation to assured tenancies. You mention in your correspondence sending a Notice to Leave to the tenant disguised as a gift. Do you have a copy of the Notice to Leave that you can provide and do you have proof of delivery of this?*
- d. The title information we have on file suggests that you still own the Property? Is it your position that your sons own the Property and that you are Guarantor? If so, please provide any paperwork that you hold in this regard.*
- e. We also requested a copy of the Section 11 Notice and evidence of this being served on the local authority. We do not appear to have received this.*
- f. Once you have confirmed which eviction grounds you are seeking to rely upon we may require further evidence to support these grounds.*
- g. The landlord registration number you provided on the Application form does not seem to appear on the Landlord Register. Please confirm the position."*

10. The Applicant was told that if she was in doubt about any of the above the tribunal would ask that she seeks advice from a solicitor or an advice agency.

11. The Applicant was asked to reply to the tribunal's office with the necessary information by 20 January 2020, otherwise the Application may be rejected.

12. The Applicant did not reply to the tribunal's request for further information made in terms of Rule 5(3) of the 2017 Rules.

13. On 4 February 2020, the Application was considered in terms of Rules 5, 8 and 109 of the 2017 Rules.

14. 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."

15. After consideration of the Application, the attachments, the first further information request, the documents lodged by the Applicant on 26 December 2019, and the second information request, 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 late response to the tribunal's first request did not meet the requirements for making an application under Rule 109. The Applicant has not responded to the tribunal's second request within the stipulated time. 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).

16. 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.



Susanne L M Tanner Q.C.

Legal Member

4 February 2020