



**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/23/2149

Parties

Mr Mark Henderson (Applicant)

Mrs Joanne Reid Williams (Respondent)

28 Rashiehill Road, Slamannan, FK1 3HL (House)

1. On 28.6.2023 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable ground 1A of schedule 3 of the 2016 Act although the entry in part 5 of the application then continue "No rent paid for last 7 months".
2. The application was not accompanied by one page from a larger document, which appeared to have been written by the tenant, in which one paragraph, referred to unpaid rent after the applicant had refused to accept further rent payment and by a

notice to leave based on ground 12A dated 15.5.2023 and stating as the relevant date in part 4 16.6.2023. No S 11 notice, no tenancy agreement and no evidence regarding ground 1A were provided, neither was any evidence of when and how the notice had been served on the tenants.

3. In a letter dated 21.8.2023 the FTT requested further information from the Applicant, in particular the S 11 notice including the required information and evidence of this having been given to the local authority and evidence of service of the notice to leave.
4. On 31.8.2023 the applicant asked why the eviction and civil cases he had lodged for the same property and parties were conjoined and stated "As I will be starting all over with the eviction side of things (mainly due to pure bureaucracy on your part) I still require the other part to proceed." The FTT wrote in reply on 5.9.2023 "Can you please advise if you would like to withdraw the eviction application, FTS/HPC/EV/23/2149?". On the same day the applicant wrote "Case ending 2149, I wish to basically start again. Is there a problem with this?" Later that day the FTT replied "With regards to case ending 2149, you have advised that you wish to start over again. We require confirmation from yourself that this application can be withdrawn. If you wish to start over again, a fresh application will need to be submitted. I have attached a copy of my earlier responses to your emails. I am unsure if these have been received by yourself as you appear to be responding only to an older email dated 21 August." No reply has been received to that email.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 7. 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

1. The lodging requirements for an application under rule 109 (b) include the requirement to lodge (i) evidence that the 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 under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act
2. S 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. There is no evidence when and how this was given to the tenant.
3. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008

as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents.

4. No evidence that ground 1A of schedule 3 of the 2016 Act applies was included. No rent statement to evidence the ground stated on the notice to leave was provided either.
5. These documents were requested and the appellant has since advised he “wants to start all over again” although despite repeated requests to formally withdraw the application, this has not been done.
6. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
7. In the absence of a formal withdrawal of the application the application must thus be formally dealt with. Because it does not fulfil the lodging criteria it is thus rejected as it would not be appropriate for the FTT to accept an incomplete application.

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

15 September 2023