



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

58 Elder Street, Tranent ("the Property")

Case Reference: FTS/HPC/EV/23/0425

Backer McKenzie, 2 Craigleith Drive, Edinburgh ("the Applicant")

Fiona Curran, 58 Elder Street, Tranent ("the Respondent")

1. The Applicant seeks an order for possession in in terms of Rule 66 of the Procedure Rules and Section 33 of the Housing (Scotland) Act 1988. A private residential tenancy agreement and Notice to leave were lodged with the application.
2. On 2 March 2023, the Tribunal issued a request for further information and documents. The Applicant was advised that, as the application appeared to relate to a private residential tenancy, it should be amended to Rule 109 and Section 51 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). The Applicant was also asked to provide evidence in support of the eviction ground and a copy of the section 11 notice sent to the Local Authority. The Applicant was also directed to clarify the basis upon which the Tribunal could consider the application, as the Notice to leave had expired more than 6 months before the application was submitted. No response was received. On 21 April 2023, the Tribunal issued a reminder letter, directing the Applicant to

provide the information and documents previously requested, or the application may be rejected. No response has been received.

Decision

3. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “ good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

4. The Applicant submitted an application for an order for possession in terms of Rule 66 of the Rules. However, the application relates to a private residential tenancy and cannot proceed in terms of Rule 66. The Applicant has been offered the opportunity to amend the application to the correct Rule, and has failed to do so. The Applicant did not lodge evidence in support of the eviction grounds or a section 11 notice, both of which are required in terms of Rule 109. The Notice to Leave lodged with the application is dated 9 August 2021 and the date specified in Part 4, as the earliest date that an application can be made to the Tribunal is 13 February 2022. The application was submitted on 8 February 2023. Section 55 of the 2016 Act states that a landlord cannot make an application with a Notice to leave “more than six months after the day on which the relevant period in relation to that notice expired.” The Applicant has been issued with two requests for information and documents to be provided, but no response has been received.
5. Rule 5 of the Procedure Rules states that an application “is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules.....105 to 111, as appropriate”. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may

request further documents”. Rule 109 requires an Applicant to lodge a copy of the Notice to Leave which has been given to the Respondent, a copy of the Section 11 Notice sent to the Local Authority and evidence in support of the eviction ground. . The Applicant did not provide evidence or the section 11 notice with the application and has failed to provide these documents when directed to do so by the Tribunal in terms of Rule 5(3). The Applicant has also lodged a notice to leave which does not comply with Section 55 of the 2016 Act.

6. As the Applicant has failed to comply with Rules 5 and 109 of the Procedure Rules, and Section 55 of the 2016 Act, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member
23 May 2023