



**DECISION AND STATEMENT OF REASONS OF MS. 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

Ref: FTS/HPC/PR/20/2378

101 The Moorings, Dalgety Bay, Fife, KY11 9JP ("the Property")

Mr David Grierson 2 Chamfron Gardens, Stirling, FK7 7XU ("the Applicant")

**Mr Clive Loble 25 Young Terrace, Cowdenbeath, Fife, KY4 9LB ("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. An application dated 8 November 2020 was received from the Applicant ("the Application"). The Application was made under Rule 69 of the 2017 Rules, being an application by a former residential occupier for damages for unlawful eviction. The Applicant referred to video evidence but no such evidence or documents were attached to the Application.
2. An application made in terms of Rule 69 must—
(a) state—

- (i) the name and address of the former residential occupier;*
 - (ii) the name, address and profession of any representative of the former residential occupier;*
 - (iii) the name and address and registration number (if any) of the landlord; and*
 - (iv) the details of the amount of damages sought based on section 37 of the 1988 Act in respect of the loss of the right to occupy the premises; and*
- (b) be signed and dated by the former residential occupier or a representative of the former residential occupier.*

3. The Applicant submitted an incomplete application and it was not accompanied by all of the required documents.
4. On 24 November 2020, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

“Before a decision can be made, we need you to provide us with the following:

1. Your application is made under Rule 69 of the Tribunal Procedure Rules which seeks an order for payment of damages for unlawful eviction under section 36(3) of the Housing (Scotland) Act 1988 (Act). Section 36(3) of the Act is in respect of unlawful eviction from an assured tenancy. Damages for unlawful eviction under section 36 must be calculated in accordance with section 37 of the Act which provides:

37 The measure of damages.

(1)The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between— (a)the value of the landlord’s interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and (b)the value of the landlord’s interest determined on the assumption that the residential occupier has ceased to have that right. Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk 2. Please provide: a. Copy of the tenancy agreement between you and the Respondent; b. Your assessment of damages calculated under section 37 of the Act and the valuations in support of that; c. Fuller details (including a timeline) of the alleged conduct by the Respondent which led you to leave the Property. d.

Please provide the documents referred to in the application, but not submitted with it”

Please reply to this office with the necessary information by 10 December 2020. If we do not hear from you within this time, the President may decide to reject the application.”

5. The Applicant failed to respond to the request for further information.
6. On 29 December 2020, a further request for the said information was sent to the Applicant, in the following terms:

“Before a decision can be made, we need you to provide us with the following:

1. Please provide the information requested in the Tribunal’s letter of 26 November; and 2. This application appears to duplicate your application with the reference PR/20/2341. Please confirm which of the applications is to be withdrawn.

Please reply to this office with the necessary information by 12 January 2021. If we do not hear from you within this time, the President may decide to reject the application.”

7. The Applicant failed to respond.
8. On 29 December 2020, an email was received from a Ms Linda Leung, who is not a party to the Application, stating as follows:

“Good afternoon

Mr David Grierson has been hospitalized twice so please accept the reasons for the delay.

Regards

Linda Leung (Supporter of Mr Grierson)”.

9. On 28 January 2021, the Application was considered by a legal

member acting under the delegated powers of the Chamber President. A letter was sent in the following terms:

“I refer to your recent application which has been referred to the Chamber President for consideration.

The legal member notes that a further information request was sent on 20 November 2020, with a reminder being sent on 29 December, and a response was sent that same date by a Ms. Linda Leung advising that you had suffered from ill health and this had led to the delay in responding to the further information request. Can you please now confirm whether you are in a position to deal with the further information requests for both applications; and if not what time period do you consider that you will be able to respond?

1. Your application is made under Rule 69 of the Tribunal Procedure Rules which seeks an order for payment of damages for unlawful eviction under section 36(3) of the Housing (Scotland) Act 1988 (Act). Section 36(3) of the Act is in respect of unlawful eviction from an assured tenancy. Damages for unlawful eviction under section 36 must be calculated in accordance with section 37 of the Act which provides:

37 The measure of damages. (1)The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between— (a) The value of the landlord’s interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and (b) The value of the landlord’s interest determined on the assumption that the residential occupier has ceased to have that right.

2. Please provide: a. Copy of the tenancy agreement between you and the Respondent; supported by the Scottish Courts and Tribunals Service www.scotcourtsribunals.gov.uk b. Your assessment of damages calculated under section 37 of the Act and the valuations in support of that; c. Fuller details (including a timeline) of the alleged conduct by the Respondent which led you to leave the Property. d. Please provide the documents referred to in the application, but not submitted with it”

Please reply to this office with the necessary information by 11 February 2021. If we do not hear from you within this time, the President may decide to reject the application.

10. The Applicant did not reply to the further request for information.
11. On 25 February 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.
12. 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."

13. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's failure to respond, it was determined that the requirements for making an application under Rule 69 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 69. The Applicant has failed to respond to the tribunal's further information requests. The Applicant has not provided the required information within the stipulated timescales. 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).

14. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

25 February 2021