



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,
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 Rules")**

in connection with

1 Newton Road, Lochside, Dumfries, DG2 0EG ("the Property")

Case Reference: FTS/HPC/RP/22/1322

Linda Johnstone ("the Tenant")

Tracey McDowall ("the Landlord")

1. The Tenant submitted an application to the Tribunal on 9th May 2022 in terms of Section 22 (1) of the Housing (Scotland) Act. On 14th September 2022, the Tribunal issued a request for further information and documents to the Tenant. The Tenant was asked to provide evidence that the Tenant had notified the Landlord of the complaints referred to in the application and a copy of any response. On 12th October 2022 the Tribunal issued a reminder directing the Tenant to provide a response to the request. On 13th October 2022 the Tenant sent an email to the Tribunal in which she stated that she had been asked to leave the Property. On 31st October 2022, the Tribunal emailed the Tenant seeking clarification on whether the tenancy had been terminated. No response was received and reminders were sent on 16th December 2022 and 25th January 2023. No response has been received to the request for evidence of notification to the Landlord or for clarification on the status of the tenancy.

DECISION

2. The Legal Member considered the application in terms of Rule 5 and Rule 48 of the Chamber Procedural Rules. Rule 5 provides: - “(1) 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 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgment. “

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.” The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 48 and Section 22(3) of the 2006 Act.**

REASONS FOR DECISION

4. The Tenant’s application is in terms of Section 22(3) of the 2006 Act and Rule 48. Section 22(3) states that no application may be made unless the person making the application has notified the landlord that work requires to be carried out for the purpose of complying the duty to maintain the property in terms of Section 14 (1) (b) of the 2006 Act. Rule 48 (b) states that an application must be accompanied by the notification referred to.

5. The Tenant has failed to provide the information and documents required by Rule 48 of the Rules and Section 22(3) of the 2006 Act. The Tenant has also failed to provide this information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. 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.

M J. McAllister, Legal Member
27TH February 2023