



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)

Chamber Ref: FTS/HPC/EV/19/1222

Re: Property at 5 Argyll Street, Lochgilphead, Argyll, PA31 8LZ (“the Property”)

Parties:

Mary Michie (“the Applicant”)
Jodie Fyfe (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 10 April 2019 the Applicant drafted an application under Rule 65 of the Rules, being an “application for order for possession in relation to assured tenancies”, submitting it shortly after.
2. On 26 April 2019, the Tribunal wrote to the Applicant seeking submissions on a number of matters relating to whether the Notice to Quit was valid (due to a question as to the date of the ish) and whether, in the absence of a valid Notice to Quit, the grounds for eviction were competent due to the terms of the tenancy and the effect of section 18(6) of the *Housing (Scotland) Act 1988*. The letter further requested a copy of the “Payment Schedule” referred to in the AT6 on which the Applicant sought to rely given that the AT6 appeared incomplete without the full attachments referred to within it. A deadline of 10 May 2019 was set for providing the documentation.
3. On 16 May 2019, after lodging various documents on 8 May 2019 (but not the requested schedule), the Applicant’s agent responded to the Tribunal by email requesting further time to respond due to he and the Applicant being otherwise engaged due to the ill-health of an elderly family member. The Applicant’s agent stated that he would “hopefully get something back to you next week”.
4. On 22 May 2019, the Applicant’s agent emailed the Tribunal to say “I have to continue to put this matter on the back burner” due to the pressures of dealing with family matters. The email did not appear to withdraw the application, however, only seek that matters be placed on hiatus.

5. As of today's date, no complete copy of the AT6 has been provided. In any event, material responses on the Notice to Quit have not been received and, on the face of it, there are significant issues regarding the sufficiency of that notice.
6. The application was considered by me as the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

7. I considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

5.—(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 lodgement 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 lodgement. ...

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—

...

- c) they have good reason to believe that it would not be appropriate to accept the application;*

...

(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.

8. Rule 65 (as amended) further provides:

Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—

(a) state—

- (i) the name, address and registration number (if any) of the landlord;*
- (ii) the name, address and profession of any representative of the landlord;*
- (iii) the name and address of the tenant; and*
- (iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;*

(b) be accompanied by—

- (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;*
- (ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;*
- (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and*
- (iv) evidence as the applicant has that the possession ground or grounds has been met;*
- (v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable); and*
- (vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1980 (if applicable); and*

(c) be signed and dated by the landlord or a representative of the landlord.

9. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*
- (b) seeking informality and flexibility in proceedings;...*

(e) avoiding delay, so far as compatible with the proper consideration of the issues.

10. After consideration of the application and attachments, I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application, it cannot be accepted.
11. The Applicant has been afforded significant time to provide the complete set of papers served as part of the AT6 Notice, which is required under Rule 65(b)(ii) of the application. In consideration of the over-riding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters. Further, it would appear that even if complete papers were lodged, full consideration of the issues surrounding the Notice to Quit may have resulted in the application being refused on other grounds but I reserve my view on such matters at this time.

RIGHT OF APPEAL

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:-

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

J Conn

Legal Member/Chair

31 May 2019

Date