



**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

**40 Greenhead Avenue, Stevenston, North Ayrshire, KA20 4DY
(the property)**

Case Reference: Case reference FTS/HPC/EV/22/0002

Parties

Mr Gavin Andrews (applicant)

Mr Brian Dyke (respondent)

1. On 30 December 2021 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application dated 13 December 2021, which was made under rule 65 of the Procedure Rules.
2. Appended to the application was a Notice to Leave dated 4 July 2021 and stating as the first day proceedings could be raised 1 February 2022 and no further documents.
3. In letters dated 5 January 2022, 31 January 2022 and 1 March 2022 the FTT requested further information from the applicant, in particular a copy of the S 11 notice, the

tenancy agreement, evidence of the ground stated applying, an AT6 document and a Notice to Quit and explanations of the use of a Notice to Leave in an application raised under rule 65 for a tenancy which, according to the Notice to Leave information, had commenced in 2014 and would ordinarily thus not be a Private Residential Tenancy but an assured or short assured tenancy.

4. The documents lodged by the applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. **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. For the sake of completeness the FTT would point out that the appellant at no point addressed the issue that there appear to be 2 tenants stated in the Notice to Leave but only one tenant as respondent in the application.
2. However, regardless of the further content of the application, the application does not meet the lodging requirements of either an application under rule 65 or under rule 109 as both types of applications require the lodging of a S 11 Notice to the local authority, which has not been provided.
3. The applicant has not explained in which way a Notice to Leave would be relevant for an application under rule 65 and failed to address the request of the FTT to provide the tenancy agreement or further information, which might have clarified the position, despite repeated requests.
4. The documents required in terms of rule 65 (b) i, ii, iii, iv and v have not been produced at any point despite several requests.
5. Even if one was to assume that the Notice to Leave was lodged because a further Private Residential Tenancy was entered into after 2014, then the documents required in terms of rule 109 (b) i and iii were not provided.
6. Either way, the documents required in the Rules of Procedure were not provided and thus it would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements.
7. The applicant had been given 3 opportunities to lodge the missing documents and provide further details and has failed to reply to all communications from the FTT.
8. The application is accordingly rejected.

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
6 April 2022