



**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

Case reference FTS/HPC/EV/22/3254

Parties

Mr Raymond Lumsden (Applicant)

Mr Paul Modiak (Respondent)

Mr Brian Warner (Applicant's Representative)

101/5 Whitson Road, Edinburgh, EH11 3BR (House)

1. On 7.9.22 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 65 of the Procedure Rules and S 18 of Housing (Scotland) Act 1988 (the 1988 Act) and stated as the grounds for the application grounds 8,11,12 and 13 of schedule 5 of the 1988 Act.
2. The application was accompanied by a Notice to Quit and AT6 document both dated

15.12.21 giving the date of 22.6.22. These were served by Sheriff Officers on 17.12.21. The application was further accompanied by several rent arrears and Pre Action Requirement letters, a rent statement to August 2022, rent increase documentation and redacted bank statements. No S 11 notice, no tenancy agreement and no evidence for ground 13 were enclosed. A paper apart stated that the lease had been lost and it was not possible to establish the start date.

3. In letters dated 6.10.22, 9.11.22 and 14.12.22 the FTT requested further information from the Applicant, in particular e.g. the S 11 notice, evidence for ground 13 and further information about the tenancy agreement. The Applicant's representative stated a S 11 notice had been sent but did not submit this. The representative also stated that it was not possible to ascertain the start date of the tenancy, so an AT6 was issued with 6 month's notice and a few days added.
4. The last 2 requests for further information from the FTT did not receive a reply.
5. No S 11 notice has been provided.
6. No evidence regarding ground 13 has been provided.
7. 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

8. 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."

9. **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. The lodging requirements for an application under rule 65 (b) include the requirements to lodge the requirement to lodge (i) a copy of the tenancy agreement or as much information as the landlord can give in, (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 in, (iii) a copy of the notice to quit, (iv) evidence as the applicant has that the possession ground or grounds has been met and (v) a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003. In terms of rule 5 (3) "the application is 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." The application is currently still incomplete at this stage.
2. S 19 (7) of the 1988 Act states: A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.
3. The AT6 document states as the date on which proceedings first could have been raised 22.6.22. The 6 months period set out in S 19 (7) of the 1988 act thus expired on 22.12.22. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such

applications. In UT 18 [2019] Sheriff Deutsch states: " [1] The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and subordinate legislation in the form of regulations made by the Scottish Ministers. In UT60 [2019] Sheriff Di Emidio states at paragraph 14: "It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT's decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant."

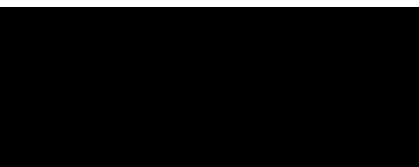
4. The AT6 notice can no longer be relied on in terms of S 19 (7) of the 1988 Act. The application remains incomplete as at today's date as no S 11 notice was lodged and no evidence regarding ground 13 was provided. The Applicant has provided insufficient details of the lease to establish the start date. Because S 19 (7) of the 1988 Act applies, it is now not possible to complete the application. It would not be appropriate to accept an incomplete application.
5. The application is thus 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.



Legal Member
16 January 2023