



**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/23/3412

Parties

Mr Michael Bain (Applicant)

Ms Sonia Orobor (Respondent)

122 Croftend Avenue, Glasgow, G44 5PF (House)

1. On 27.9.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which indicated as the relevant rule rule 66. Rule 66 relates to tenancies under the Housing (Scotland) Act 1988. The applicant thereafter produced a tenancy agreement, which showed that the tenancy commenced on 1.8.2019.
2. The ground stated on the application is that the landlord intends to refurbish the property. The documents included in the application were a Notice to Quit, a AT6 notice and a S11 notice.

3. The application was not accompanied by any evidence how and when the notice to quit was served but the tenant had signed a declaration that they had received a S 33 notice and an AT6 notice on 15.9.23. The notices both referred to the tenant having to vacate the property on 8.12.23.
4. No notice to leave in terms of s 62 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) was produced.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

7. 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 s 11 notice and the tenancy agreement state that the tenancy commenced on 1.8.2019. In terms of S 12(1A) of the Housing (Scotland) Act 1988 “ **A tenancy cannot be an assured tenancy if it is granted on or after 1 December 2017**”. Since the coming into force of the 2016 Act no new Assured or Short Assured Tenancies as defined in the Housing (Scotland) Act 1988 can be entered into. The tenancy started after the coming into force of the 2016 Act on 1.12.2017. The application can thus not be validly made under rules 66 or 65 as these rules apply to tenancies under the Housing (Scotland) Act 1988.
2. The tenancy, being a tenancy by which a property is let to an individual as a separate dwelling and the tenant occupies the property as the tenant’s only or principal home would thus be a Private Residential Tenancy (PRT) as defined by s 1 of the 2016 Act. An application relating to the tenancy lodged would thus have to be made under rule 109. The lodging requirements for an application under rule 109 (b) include the requirement to lodge “(ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act.” No notice to leave as defined in S 62 of the 2016 Act was included in the application.
3. The notices attached to the application both state that the tenant has to vacate the property by 8.12.23. Regardless of the nature of the tenancy agreement, the application is significantly premature.
4. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
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
30 October 2023