



**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/23/2310

Parties

Mr James Hislop (Applicant)

Miss Katie Nixon (Respondent)

17/2 Murano Place, Edinburgh, EH7 5HH (House)

1. On 10.7.23 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an order for possession under Rule 65 of the Procedural Rules and s 18 of the Housing (Scotland) Act 1988. It mentioned as the ground for the “urgent renovations require due to the sub-standard condition of the property”. The application was only accompanied by the following documents:
 - a) a tenancy agreement giving as the term 12 months beginning 9.6.07.
 - b) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016 stating as the ground urgent renovations but not indicating any of the grounds on the list of grounds stated on the form. The notice to neave is dated 5.7.23 and

states as the date proceedings can first be raised 4.9.23. It did not provide the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.

c) a only partially readable S 11 notice without confirmation of service.

2. On 13.7.23 the FTT wrote to the applicant requesting the following information: a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy ("AT6") • evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy ("AT6") being served by the landlord on the tenant • a copy of the notice to quit served by the landlord on the tenant (if applicable) • evidence of the notice to quit being served by the landlord on the tenant (if applicable) • evidence tending to show that the possession ground or grounds has been met • evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority. On 13.7.23 the applicant stated the tenant received the copies of all documents by email on the same day as the FTT.
3. The FTT wrote again on 14.8.23 requesting essentially the same information as before. The applicant sent in a S 33 notice document dated 13.8.23 in reply and stated the tenant had received this with "the AT6 and section 11 and notice to leave".
4. The FTT wrote again on 8.9.23 explaining: 1. Your application seeks to proceed under Rule 65 (assured tenancies). In order for that application to proceed you must produce the Notice to Quit (along with proof of service on the tenant), Form AT6 (along with proof of service on the tenant), section 11 Homelessness Notice (along with proof of service on the local authority) and evidence in support of the Ground relied upon in your application. 2. You have provided a copy of a notice to leave. This form applies to tenancies created subsequent to 1 December 2017. It does not apply to assured tenancies under the Housing (Scotland) Act 1988. Please provide a valid Notice to Quit along with proof of service on the tenant. 3. You have provided a copy of a section 33 Notice. This is not a Notice to Quit and irrelevant for applications under Rule 65. 4. You have not provided a copy of Form AT6. Please provide a complete copy along with proof of service on the tenant. 5. Please provide a complete copy of the section 11 homelessness Notice along with proof of service on the local authority. The copy you have provided is illegible. 6. Please provide evidence in support of the Grounds relied upon for eviction. Please reply to this office with the necessary information by 22 September 2023. If we do not hear from you within this time, the President/Legal Member may decide to reject the application.
5. No further reply has been received.
6. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

8. 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

9. The Application is made in terms of Rule 65 of the Rules of Procedure. This relates to orders for possession in relation to assured tenancies under S 18 (1) of the Housing (Scotland) Act 1988.
10. The application was not accompanied by a valid Notice to Quit which meets the requirements for a notice to quit terminating the contractual relationship between parties of a tenancy under the Housing (Scotland) Act 1988. The applicant had provided a S 33 notice, which is not a document required for an application under rule 65 and which is not a Notice to Quit. He also provided a notice to leave document under the Private Housing (Tenancies) (Scotland) Act 2016, which again is not a valid Notice to Quit under the Housing (Scotland) Act 1988. Neither document contained the information required in terms of the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended for a valid Notice to Quit.
11. The applicant has not provided an AT6 document at all.
12. The applicant has not provided evidence that a ground listed in schedule 5 of the Housing (Scotland) Act 1988 applied in this case and has not specified the ground in the application.
13. The applicant only provided a partially readable copy of a S 11 notice.
14. Rule 65 requires the lodging of a Notice to Quit and a S 11 notice with the application. The Applicant has not lodged a Notice to Quit. He has lodged only a Notice to Leave, which is not valid for assured tenancies.
15. Rule 65 requires the lodging of a S 11 notice. This was explicitly pointed out to the Applicant by the FTT. He has not provided a readable copy of a s 11 document that would allow the FTT to determine whether all required information was included in that document.
16. Rule 65 requires the lodging of an AT6 form. No AT6 form was provided.
17. Rule 65 requires the lodging of evidence that the possession ground has been met, no such evidence was provided.
18. The application thus does not comply with the lodging requirements stated in rule 65 b (ii), (iii),(iv) and (v) of the Rules of Procedure.
19. For the reasons stated above it would not be appropriate for the Tribunal to accept the application as this does not fulfill the lodging requirements of a valid application.

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
26 October 2023