



DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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 Procedure Rules")

Case Reference: FTS/HPC/EV/23/2228

3/4 Hawkhill Close, Edinburgh, EH7 6AB ("the Property")

James Hislop ("the Applicant")

William Wincox ("the Respondent")

1. The Applicant seeks an order for possession in terms of Rule 65 of the Procedure Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). Some supporting documentation was lodged with the application, which was lodged with the Tribunal on 4 July 2023. Although the tenancy appeared to be a short assured tenancy, the Applicant had submitted a Notice to Leave with the application which is the appropriate notice in terms of a private residential tenancy created under the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"). The applicant had also quoted a ground for eviction which appeared to relate to the 2016 Act (Ground 1A).
2. Several requests for clarification/further information have been issued by the Tribunal. The Applicant responded to the first request from the Tribunal dated 6 July 2023 on that date and to the second request dated 7 August 2023 on 9 August 2023, when he submitted a copy of an AT6 Notice. However, the AT6 Notice was incomplete and the Applicant had also failed to supply a copy of the Notice to Quit which had also been requested. On 30 August 2023, the Tribunal issued a further request in the following terms:-

"As previously advised, the application can only be accepted if you provide a valid notice to quit and AT6 notice which have been served on the respondent, with evidence of service. You have not provided a Notice to Quit and the AT6 appears to be invalid as there is no date specified in Part 4 and it is based on an eviction ground which does not apply to assured tenancies under the 1988 Act.

If you have not served the correct notices, you should withdraw the application and

re-submit it when you have done so. You may wish to take legal advice before you respond.

Please respond within 14 days or your application may be rejected. Please reply to this office with the necessary information by 13 September 2023.”

No further response was received and the Tribunal accordingly issued a reminder to the Applicant by email on 9 October 2023, referring to the previous information request dated 30 August 2023 and requesting a response within 7 days, by 16 October 2023, failing which the Applicant was informed that the application may be rejected. No response was received by that deadline, nor since.

Decision

3. After detailed consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

4. Rule 5 of the Procedure Rules states that 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...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
5. The Applicant has not lodged a Notice to Quit required in terms of Rule 65 and the AT6 provided is incomplete and therefore, not valid. The Applicant has been given several opportunities to clarify the position and submit the documentation required but has failed to do so.
6. The Applicant has failed to comply with Rules 5 and 65 of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.

10 November 2023