



**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/23/3067

Parties

Miss Hilda Kelly (Applicant)

Ms Karen Haldane (Respondent)

Westgate Estate Agents (Applicant's Representative)

10 Rowena Avenue, Glasgow, G13 2JH (House)

1. On 4.9.23 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an order for possession under Rule 109 of the Procedural Rules based on “ground 1 Landlord intends to sell the property and is retiring from being a landlord”. The application was only accompanied by the following

documents:

- a) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016 dated 23.5.23 sent by email on 24.4.23 and stating as the date in part 4 19.8.23.
 - b) a form AT6 stating ground 1 as "landlord selling and retiring from being a landlord" dated 23.5.23 and stating as the date when proceedings could first be raised 19.8.23. It did not provide the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.
 - c) a s 33 notice under the Housing (Scotland) Act 1988 with the same dates.
 - d) a s 11 notice addressed to West Dunbartonshire Council but emailed to Glasgow City Council on 14.7.23.
2. On 21.9.23 the FTT wrote to the applicant requesting the following information: 1. Please provide a copy of the tenancy agreement. 2. Please provide evidence that the ground of eviction has been established, such as a letter of engagement from a solicitor or estate agent or a home report. 3. A mandate from the Applicant authorising you to represent her in these proceedings.
 3. On 2.10.23 the applicant provided a lease document showing a Steve Kelly as the landlord and the respondent as the tenant. The lease commenced on 20.2.14 and stated as the original ish date 20.8.14 and thereafter any subsequent 20th day of the month (clause 4). It did not provide any information of the detailed grounds for possession. The applicant also provided an AT5 form, a sales agreement and authorisation of the agent by the applicant.
 4. The FTT wrote again on 31.10.23 requesting the following information: 1. The tenancy agreement you provided shows a Steve Kelly as the landlord, not the applicant. Please explain in what capacity the applicant is making this application and in what capacity Mr Kelly acted as landlord. 2. The tenancy agreement you provided dates from 2014 and thus would not be tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. You made the application under rule 109. Please either amend the application or explain why you consider the tenancy is a PRT and provide evidence that a new tenancy under the 2016 Act was entered into. 3. If the application is to proceed under a different rule please provide the required documents for that type of application. Please note that any notice sent under the Housing (Scotland) Act 1988 will require to be provided together with evidence of a valid service by recorded delivery/Sheriff Officers/personally. 4. The S 11 Notice you provided appears to be directed to West Dunbartonshire Council but emailed a Glasgow email address. Please explain why this is directed at a different Council. Please provide a valid S 11 notice and proof of how and when this was given to the relevant Council.
 5. On 8.11.23 the agents replied with an amended application form stating the application

was to be under rule 65. They explained the applicant was the partner of the late landlord. A fresh S 11 notice was attached, which had been served on the correct local authority.

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 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. She 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. Thus no Notice to Quit for the tenancy agreement has been produced. The requirement for a Notice to Quit cannot be dispensed with in this case because the tenancy agreement did not make provision for it to be brought to an end on the ground in question as required by s 18(6) of the 1988 Act.
11. Rule 65 requires the lodging of evidence that the possession ground has been met, no such evidence was provided. The AT6 document provided refers to a ground which is not listed in schedule 5 of the Housing (Scotland) Act 1988. 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 a valid ground in the application and in the AT6 form. Ground 1 of schedule 5 of the 1988 Act is not that the landlord wishes to sell the property but that "*Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the [F2First-tier Tribunal] is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—*
(a)at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or
(b)the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's [F3or civil partner's] only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the

tenancy for value.” The ground given on the AT6 document “ground 1 - landlord selling and retiring from being a landlord” is at best an approximation of ground 1 under schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 but not under the 1988 Act. The evidence of an intention to sell the property is irrelevant to these proceedings. No evidence was provided that ground 1 of schedule 5 of the 1988 Act would apply and that ground was also not referred to in any of the documents.

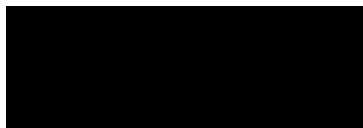
12. Rule 65 requires the lodging of a Notice to Quit and evidence of the ground stated in the AT6 notice with the application. The Applicant has not lodged a Notice to Quit. She has not provided a valid AT6 notice as this does not refer to a valid ground under the 1988 Act and has not provided evidence of service of the AT6 notice on the respondent.
13. The application thus does not comply with the lodging requirements stated in rule 65 b (ii), (iii) and (iv) of the Rules of Procedure.
14. 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

28 November 2023