



**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/23/3158

Parties

Ms Theresa Cooper (Applicant)

Mr Paul Linden (Respondent)

1-2-Let (Lettings & sales) LTD (Applicant's Representative)

128d Clydesdale Road, Bellshill, ML4 2QL (House)

1. On 8.9.23 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an order for possession under Rule 66 of the Procedural Rules and s 33 of the Housing (Scotland) Act 1988. The application was only accompanied by the following documents:
 - a) the tenancy agreement commencing 7.2.14

- b) A notice to quit dated 23.6.23 to the date of 7.9.23
 - c) A S 33 notice dated 23.6.23 to the date of 7.9.23
 - d) Certificate of Service of both documents by Sheriff Officers
 - e) S 11 notice indicating as the relevant proceedings "other proceedings" and not S 19A of the Housing (Scotland) Act 1988. Service email of said notice.
 - f) Ultimately authorisation of the agent and an explanation of the name change for the Applicant were also provided in further correspondence.
2. On 11.9.23, 4.10.23 and 30.10.23 the FTT wrote to the agent requesting them to provide a copy of the AT5 document. This has still not been provided and no explanation was given as to why it was not lodged.
3. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

4. 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."

5. 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

6. The Application is made in terms of Rule 66 of the Rules of Procedure. This relates to orders for possession in relation to assured tenancies under S 33 of the Housing (Scotland) Act 1988.
7. The application was not accompanied by the notice AT5 given to the tenant. This had been repeatedly requested and the Applicant and the Applicant's agent have not provided the document or explained why this would not be available despite 3 written requests from the FTT. The application thus does not comply with the lodging requirements stated in rule 66 b (ii) of the Rules of Procedure.
8. The S 11 notice was not correctly completed as it did not refer to the correct legislation under which proceedings were being notified. It did not indicate the legislation was the Housing (Scotland) Act 1988 but indicated it was "other proceedings". This was pointed out in correspondence from the FTT on 4.10.23 and not addressed by the Applicant or her agent. Whilst this on its own may not have led to a rejection of the application, it does mean that the requirement of rule 66 b(v) of the Rules of Procedure technically is not met.
9. For the reasons stated above it would not be appropriate for the Tribunal to accept the application as this does not fulfill the requirements of a valid application. The application is rejected.
10. For the avoidance of doubt, it remains open to the Applicant to make a further application in future provided all relevant documents are then submitted.

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

1 December 2023