



**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/23/3981

Parties

Mr Steven Thompson (Applicant)

Mr Lee Cooper (Respondent)

28 North Seton Park, Port Seton, East Lothian, EH32 0AH (House)

1. On 8.11.23 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 (the Act) based on the ground stated in part 5: "The Landlord intends to sell the property". The application was only accompanied by the following documents:
 - a) a notice to quit dated 7.10.23 giving as the relevant date to quit the property 2.1.24.
 - b) a form AT6 stating ground 1A as "We intend to live in let property to alleviate

financial hardship” dated 7.10.23 and stating as the date when proceedings could first be raised 2.1.24.

- c) a s 33 notice under the Housing (Scotland) Act 1988 with the same dates.
2. On 10.11.23 the FTT wrote to the applicant requesting further information and documents. On 14.11.23 in answer to this request the Applicant produced a Tenancy Agreement dated 4.11.2017 with an initial ish date of 4.11.2018 and continuation month to month thereafter as stated in clause3. He also produced a S 11 notice and proof of service and provided an email sending the notice to quit, S 33 notice and AT6 form to the tenant on 7.10.23. In the reply he stated “We intend to sell the Property, evidence can be sent once Tenant has been evicted and we engage with our Solicitor to engage with the sale.”
 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 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.
7. 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. He also provided Notice to Quit document which is issued to 2.1.24. This is not an ish date of a tenancy which commenced on 4.11.2027 and had as its original ish date 12 months thereafter thus 4.11.2018. The tenancy in terms of clause 3 continued thereafter on a month to month basis. The 4th day of a month is not a valid ish date.
8. The application is premature. The date on the AT6 and Notice to Quit documents is 2.1.2024. The notice period stated has not expired.
9. The AT6 document gave as the ground that the landlords wish to move into the property. However the application is not based on that ground. The application is made solely on the basis that the landlord wishes to sell the property. This has been further clarified in the reply by the Applicant on 14.11.23 when he clearly stated the intention and ground for the application was to sell the property. The sale of a property is not a possession ground stated in schedule 5 of the Housing (Scotland) Act 1988. It is only a ground for eviction stated in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, which applies to Private Residential Tenancies entered into after the 2016 Act came into force. The grounds of schedule 3 of the 2016 Act do not apply to assured tenancies under the Housing (Scotland) Act 1988

and thus the application does not state a valid ground for an application under rule 65. In terms of s 18 (4) of the Housing (Scotland) Act 1988 the FTT can only make an order for possession if satisfied that any of the grounds in Schedule 5 to the 1988 Act are established. The application is not made on one of the applicable grounds.

10. Finally, all three notices were sent to the tenant by email on 7.10.23. Email is not a valid form of service for notices under the Housing (Scotland) Act 1988, which are defined in s 54 of the Act.
11. 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, is premature and is not based on a valid possession ground for that type of tenancy.

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

11 December 2023