



**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

Parties

Mr John McCabe (Applicant)

Ms Joanne Kerry, Ms Kerry Munro (Respondent)

7 Millfield, Cuper, Fife, KY15 5UT (House)

1. On 23.11.23 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 ground 1 of schedule 5 of the said act . The application was accompanied by the following documents:
 - a) A notice to terminate to Ms Munro dated 15.8.23 for a date of 2.11.23
 - b) A notice to terminate to Ms Robertson dated 15.8.23 for a date of 2.11.23
 - c) A S 11 notice to the local authority
 - d) A document described as S 33 notice to terminate tenancy to Ms Robertson dated 15.8.23 for the date of 2.11.23

- e) A document described as S 33 notice to terminate tenancy to Ms Munro dated 15.8.23 for the date of 2.11.23
 - f) Form AT6 to Ms Robertson dated 10.11.23 for the date of 18.11.23
 - g) Form AT6 to Ms Munro dated 10.11.23 for the date of 18.11.23
 - h) Tenancy agreement between applicant and Joanne Lennie commencing 1.11.16 with an initial ish date of 31.10.18 thereafter month to month.
 - i) Tenancy agreement between applicant and Kerry Munro commencing 15.5.13 with an initial ish date of 14.11.13 thereafter month to month.
 - j) Background information letter explaining that there are two tenancies for the entire house and that Ms Lennie reverted back to her previous name of Robertson.
2. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

3. 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."

4. 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

5. 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. In terms of rule 65 (b) an application has to be accompanied by (ii) a copy of the notice by the landlord if intention to raise proceedings for possession of a house let on an assured tenancy and (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable). I interpret this to mean that the documents mentioned in (b) (ii) and (iii) have to be at least on the face of it valid documents for that purpose.
6. 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 for both tenants a document headed Notice to terminate your tenancy at 7 Millfield. These documents were not in the format prescribed in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended in that they did contain the following appendix:
"INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT
 1. Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the First-tier Tribunal.
 2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In

such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.

3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre.”

7. The applicant did provide some of the required information in different wording but did not refer to an order of possession being required for a lawful eviction, did not give information about point 2 of the above appendix and did not refer to Legal Aid legislation as required in point 3. He referred to other advice agencies, not those stated in the statutory information as set out above. I find that the notices did not comply with the requirements of the Regulations and thus were not valid.
8. I also find that neither notice was issued to a valid ish date of the tenancies provided. One continued from 31.10.18 month to month. The second day of the month November is thus not a valid ish date. The other continued month to month from 14.11.13. The second day of the month November is thus not a valid ish date. Neither notice thus constitutes a valid Notice to Quit.
9. In terms of S 18 (6) of the Housing (Scotland) Act 1988 a valid termination of the contractual tenancy is required to allow the First –tier Tribunal to make an order for possession based on ground 1 of schedule 5 of the Act. No valid Notice to Quit for either tenant was provided and thus the lodging requirement in rule 65 (b) (iii) not met.
10. The AT6 documents both stated as their date 10.11.23 and stated proceedings will not be raised before 18.11.23. This only gave one week notice at best (10 to 18.11.23) and not the required minimum period of two months as stated in S 19 (4) (a) of the Housing (Scotland) Act 1988. The AT6 documents are thus not valid. Thus the lodging requirement in rule 65 (b) (ii) was not met.
11. The applicant has not provided a notice for ground 1 of schedule 5 of the Housing (Scotland) Act 1988 issued to the tenants at the start of the respective tenancies.
12. The applicant has also not provided any evidence of how any of the notices were served on the respective tenants, however, due to the fundamental flaws in the notices submitted, this information was not requested as it would not have affected the validity of the AT6 documents and notice documents.
13. 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
13 December 2023