



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of an application by Mrs Nusrat Ahmad in terms of rule 65 of the rules.

At Glasgow on the 6 November 2023, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) of the Rules.

1. This is an application by Mrs Nusrat Ahmad owner and registered landlord of 2 Ben Vorlich Drive Glasgow G53 7PF, ‘the property’, for recovery of possession of the property in terms of Rule 65.
2. The application was dated 27 July 2023 and made on behalf of Mrs Ahmad by Ms Marilyn Deans. There was a second application for recovery of rent arrears which has been accepted.
3. The application was accompanied by the following:
 - Tenancy agreement
 - AT5
 - Notice to quit
 - AT6
 - Execution of service of notice to quit and AT6 by Sheriff Officer.
 - S11 notice.
 - Execution of Service of section 11 notice by Sheriff Officer.
 - Pre-action requirements letter.
4. The inhouse convenor reviewed the application and the Tribunal wrote to the applicant on 22 August 2023 as follows:
 - The S 11 notice refers to the wrong legislation (Housing (Scotland) Act 2001) rather than the Housing (Scotland) Act 1988. Please provide a correct S 11 notice.
 - Please explain on what legal basis you issued a Notice to Quit to the date of 24 March 2023. This appears not to be valid as 23 March is not a valid ish date for a tenancy which commenced on 1 July 2014 and had the duration of one year.

- Please explain why ground 8 was included in the AT6 form as this was repealed on 1.10.2022 by S 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022.
- Please provide a rent statement in the format: date, rent due, rent paid, running total of arrears for this case. Please reply to this office with the necessary information by 5 September 2023. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

5. The applicant's representative responded on 31 August 2023 (with her comments on the requested matters in parenthesis and in bold) as follows:

The S 11 notice refers to the wrong legislation (Housing (Scotland) Act 2001) rather than the Housing (Scotland) Act 1988. Please provide a correct S 11 notice. **(correct S11 notice attached as requested)** Please explain on what legal basis you issued a Notice to Quit to the date of 24 March 2023. This appears not to be valid as 23 March is not a valid ish date for a tenancy which commenced on 1 July 2014 and had the duration of one year. **(I was of the view a Notice to Quit required to provide tenants with a minimum notice period of 28 days and did not require to correspond with the ISH date of a tenancy, unlike Form AT6, is this not the case? Also, within the Notice to Quit, the tenant was provided with more than the required 28 days notice period. However, in any event, it now strikes me service of Form AT6 is solely sufficient to raise proceedings for eviction and the Notice to Quit not required, therefore to avoid any further confusion, perhaps we should remove the Notice to Quit from this action? I look forward to hearing from you).** Please explain why ground 8 was included in the AT6 form as this was repealed on 1.10.2022 by S 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022. **(At the time of preparing the AT6, I was unaware ground 8 has been repealed. However, grounds 11 and 12 have been detailed and can be founded upon)** I trust the above is sufficient for your purposes and shall of course address the further points in due course, after I have heard from the Landlord.

6. The in-house convener reviewed the application again in the light of this further information and a further letter was sent on 4 October 2023 as follows:

Please note that in terms of S 18 (6) of the Housing (Scotland) Act 1988 the contractual tenancy has to be terminated by a valid Notice to Quit or the landlord can rely for certain grounds on an AT6 notice alone if, and only if, in terms of S 18 (6) (b) of the 1988 Act "the terms of the tenancy make provisions for it to be brought to an end on the ground in question". Please make representations how you consider the requirement for S 18 (6) (b) is complied with. Case law, in particular the case Royal Bank of Scotland v Boyle, 1999, Hous LR 43 and 63 sets out that for this to be the case "the essential ingredients of the ground in question must be referred to in the tenancy agreement." You may wish to obtain legal advice on the matter. Please reply to this office with the necessary information by 18 October 2023. If we do not hear from you within this time, the President may decide to reject the application.

7. The applicant's representative responded on 9 October 2023 stating " It would appear I have founded upon the AT6 in the application, rather than the Notice Under Section 33(1)(D) which is attached hereto. If this is acceptable, I will lodge a fresh Form E substituting AT6 with the above Notice".

8. No amended application in terms of rule 66 has been received. Even it had, it would be bound to fail as there is an insurmountable difficulty with this application which has led me to reject it. The same difficulty would apply to a rule 66 application.
9. In my view the notice to quit is invalid as it does not tie in with the ish date. The ish in the notice to quit provided is 24 March 2023. The agreed term of the tenancy was 12 months from 1 July 2014. There is no provision for month to month thereafter. The ish is therefore 1 July.
10. The applicant could seek to rely on the terms of s8(6) of the Housing (Scotland) Act 1988 ('the Act') and proceed on the basis of the AT6 in the absence of a valid notice to quit. Section 18 of the Act provides :

Orders for possession.

(1)The **[F47First-tier Tribunal]** shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

F48(3).

F49(3A).

(4)If the **[F50First-tier Tribunal]** is satisfied that any of the grounds in **[F51Part I or II]** of Schedule 5 to this Act is established, **[F52the Tribunal]** shall not make an order for possession unless **[F52the Tribunal]** considers it reasonable to do so.

[F53(4A)]In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the **[F54First-tier Tribunal]** shall have regard, in particular, to]—

[F55(a)]the extent to which any delay or failure to pay rent taken into account by the **[F54Tribunal]** in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit **[F56or relevant universal credit]** **[F57**, and

(b)the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.]

(5)Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6)The **[F58First-tier Tribunal]** shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a)the ground for possession is Ground 2 **F59**... in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 **F60**... Ground 10 **[F61**, Ground 15] or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

[F62(6A)] Nothing in subsection (6) above affects the **[F63]** First-tier Tribunal 's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.]

(7) Subject to the preceding provisions of this section, the **[F64]** First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

[F65(8)] In **[F66]** subsection (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

[F67(aa)] “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;]

(b) references to delay or failure in the payment of relevant housing benefit **[F68]** or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.]

[F69(9)] Regulations under subsection (4A)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).]

11. Section 18(6) of the Act therefor allows the Tribunal to grant an order for recovery of possession where a contract has not been terminated. As the notice to quit provided is invalid, the contract has not come to an end and section 18(6) could apply. In the case of Royal Bank of Scotland-v- Boyle 1999 Hous LR 43 it was established that for an application based on s18(6) to succeed the essential ingredients of the ground relied upon must be referred to in the tenancy agreement. The tenancy agreement provided with this application makes no reference to schedule 5 and no eviction grounds are narrated. Section 18(6) does not therefore apply.

12. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if **“they consider that an application is vexatious or frivolous”**. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall)Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”.
13. I am rejecting this application as it has no prospects of success for the reasons given above. The notice to quit is invalid and section 18(6) cannot be used as the tenancy agreement does not narrate the terms of schedule 5.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward

Legal Member