



Decision with Statement of Reasons of Helen Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/23/3066

Parties:

Richard McVicker ("the Applicant")

Raymond Menzies ("the Respondent")

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was made under Rule 65 and was received on 4th September 2023. The Applicant was seeking an order for possession under ground 1.
2. The Applicant responded by email dated 12th September 2023 to a request for further information from the Chamber Administration, enclosing a copy section 11 notice to the local authority and evidence of service. The Applicant stated they were out of the country and did not have original documentation to hand. The Applicant provided details of the date of entry and rent, and undertook to provide the tenancy agreement when they returned home the following weekend.
2. The Tribunal considered the application and wrote to the Applicant requesting the following information on 9th October 2023:
 1. Please provide a copy of the tenancy agreement.
 2. Please provide proof of service of the AT6 on the Respondent.



3. You have provided a Notice to Leave. Notices to Leave are only relevant for tenancies created after 1 December 2017. Your application n has been made under Rule 65 and relates to assured tenancies created prior to that date. Such tenancies need to be terminated by a notice to quit. Please provide a copy of the notice to quit and proof of service on the Respondent.
4. Please provide evidence in support of the Ground relied upon such as the notice given to the Respondent at the commencement of the tenancy that possession might be recovered on this Ground and also confirm that you occupied the Property as your principal home prior to the commencement of the tenancy.

Please reply to this office with the necessary information by 23rd October 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. No response was received from the Applicant. A further opportunity to provide the information was sent by email dated 15th November 2023, requesting that the information be provided by 29th November 2023. No response was received.
4. The application was considered by a Legal Member on 28th December 2023.

Reasons for Decision

5. The Tribunal considered the application in terms of Rule 8 of the Chamber 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 ...

(c) they have good reason to believe that it would not be appropriate to accept the application;

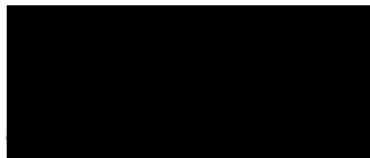
(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."



6. The Tribunal has requested further information from the Applicant in order to consider whether or not the application can be accepted. The Applicant has failed to respond to the Tribunal's request for further information and documents. Rule 65 of the Procedure Rules requires that a copy of the tenancy agreement be provided. The Applicant has provided some information in relation to the tenancy and stated they would provide a full copy of the tenancy agreement. Rule 65 requires that a copy of the notice to quit served upon the tenant be provided, if applicable. No notice to quit has been lodged, and, in the absence of the tenancy agreement, it is impossible to ascertain whether a notice to quit is applicable. No evidence has been provided to show that the ground of possession is met, as required by Rule 65.
7. There is good reason to believe it would not be appropriate to accept the application. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.



28th December 2022

Legal Member/Chair

Date

Housing and Property Chamber
First-tier Tribunal for Scotland

