



**DECISION AND STATEMENT OF REASONS OF JAN A TODD LEGAL  
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF  
THE CHAMBER PRESIDENT**

Under Rules 5 and 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/23/3919

**Parties**

**Mr Kevin Cairns (Applicant)**

**Ms Gillian McDonald (Respondent)**

**Covault Workspace (Applicant's Representative)**

**6 Threestonehill Avenue, Glasgow, G32 0LX (House)**

**BACKGROUND**

1. On 6<sup>th</sup> November 2023 the Applicant's representative lodged an application for eviction of the Respondent in respect of their tenancy of the property at 6 Threestonehill Avenue, Glasgow G32 0LX('the property'). The application was made in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and s18 of the Housing (Scotland) Act 1988 (the 1988 Act). The Applicant was seeking eviction on the

ground he wished to sell the Property. The Applicant lodged a copy Notice to quit, S33 notice, S11 notice, tenancy agreement and AT5 form with the Application.

2. The Tribunal administration on the instructions of a legal member requested further information from the Applicants on 23<sup>rd</sup> November 2023 as follows:

*“A Legal Member of the Tribunal with delegated powers of the President has considered your application. Before a decision can be made, we need you to provide us with the following:*

1. *You have indicated that the application is to proceed under Rule 65.*

*However you have submitted a section 33 notice and not an AT6. Please confirm if you wish to proceed under Rule 66 or Rule 65.*

2. *If you wish to proceed under Rule 66 please provide the following a) An amended application form which refers to the correct Rule and provides an address for the Applicant. Please note that a c/o address cannot be used. b) A valid notice to quit which has been served on the Respondent. The notice lodged is invalid as the date specified does not coincide with the ish date.*

3. *If the application form is to proceed under Rule 65 please provide the following a) An amended application form which refers to a valid ground of possession. Landlord intends to sell is not a ground for assured tenancies. b) An address for the Applicant. Please note that a c/o address cannot be used. c) A valid Notice to quit with evidence of service, unless section 18(6) applies. This will depend on the eviction ground d) An AT6 with evidence of service e) Evidence in support of the eviction ground.*

4. *For either ground please also confirm if the joint owner is to be added as joint Applicant or provide written authority from her for the application to proceed in the sole name of the Applicant.*

*Please reply to this office with the necessary information by 7 December 2023. If we do not hear from you within this time, the President may decide to reject the application.”*

3. The Applicant’s representative responded on 12<sup>th</sup> December 2023 asking *“Good Afternoon, We are awaiting information from the landlord do we have to raise another case or can we continue with this one?”*

4. A further request for information was sent by the Tribunal on 9<sup>th</sup> January 2024 stating *“Before a decision can be made, we need you to provide us with the following:*

- *We refer to the Tribunal’s e-mailed letter to you dated 23<sup>rd</sup> November 2023, and to your e-mail in response of 19<sup>th</sup> December 2023 (see attached). Could you please respond substantively to the matters raised in the Tribunal’s letter*

*of 23rd November within 7 days of this letter or the Tribunal may well reject your application. Please reply to this office with the necessary information by 17th January. If we do not hear from you within this time, the President may decide to reject the application.”*

5. The Applicant’s representative replied on the same day the 10<sup>th</sup> January stating “Good Afternoon, The landlord is trying to sell this property to other investors its not the open market at the moment what information do you require as proof of this?” The Tribunal responded later on 10<sup>th</sup> January stating “Good Afternoon, We refer to your email of 10 January 2024. Please note that we wrote to you on 23 November 2023 in some detail in connection with this application and you have not responded to our request. You have told us the applicant is trying to sell the property but we have told you this is not a valid eviction ground. Please respond to the following within 14 days: 1. You have made the application under Rule 65. However you have submitted a section 33 notice and not an AT6. Please confirm if you wish to proceed under Rule 66 or Rule 65.
2. If you wish to proceed under Rule 66 please provide the following a) An amended application form which refers to the correct Rule and provides an address for the Applicant. Please note that a c/o address cannot be used. b) A valid notice to quit which has been served on the Respondent. The notice lodged is invalid as the date specified does not coincide with the ish date.
3. If the application form is to proceed under Rule 65 please provide the following a) An amended application form which refers to a valid ground of possession. Landlord intends to sell is not a ground for assured tenancies. b) An address for the Applicant. Please note that a c/o address cannot be used. c) A valid Notice to quit with evidence of service, unless section 18(6) applies. This will depend on the eviction ground d) An AT6 with evidence of service e) Evidence in support of the eviction ground.
4. For either ground please also confirm if the joint owner is to be added as joint Applicant or provide written authority from her for the application to proceed in the sole name of the Applicant.

*Please note that the tribunal cannot provide advice in connection with applications. Please also note that it is unlikely any reminders will be sent in connection with this matter and if you do not respond as we have requested it*

*is likely the application will be rejected.”*

6. No other correspondence has been received from the Applicant in response to the original request for information sent on 23<sup>rd</sup> November 2023 nor in response to the reminders sent asking for a substantive response.

## **DECISION**

7. I considered the application in terms of Rule 5 and Rule 8 of the Procedural Rules.

8. Rule 5 provides:-

“Requirements for making an application:

1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.”

9. Rule 8 provides:

“8. Rejection of application

(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.”

10. The applicant has failed to respond to the Tribunal’s substantive requests for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available.. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant’s failure to respond substantively to the Tribunal’s request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal’s enquiries in order to progress this application. In particular the Applicant has not provided an AT6 or evidence of valid grounds that could support an application under Rule 65 and s18 of the 1988 Act nor has he asked for the application to be changed to Rule 66 or provided a response about the validity of the Notice to Quit.

11. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5 and Rule 8(1) (c) of the Procedural Rules.

### **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.

# Jan A Todd

Jan A Todd  
Legal Member  
20<sup>th</sup> February 2024