



**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/24/0017

Parties

Mrs Grace Markov (Applicant)

Mrs Agnes Rooney (Respondent)

43B Portland Street, Coatbridge, North Lanarkshire, ML5 3JT (House)

1. On 3.1.24 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. It mentioned as the ground for the application rent arrears and an “eviction notice served 4/11/23 giving two months notice”.
2. In the course of further correspondence the following documents were provided by the applicant:
 - a) a tenancy agreement giving as the term 12 months beginning 1.4.2017.
 - b) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016

stating as the ground rent arrears. The Notice to Leave is dated 4.11.23 and gives as the relevant date proceedings can first be raised 3.1.24. It did not provide the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.

c) An AT6 notice dated 4.3.24 and stating proceedings would not be raised before 4.3.24

d) A rent statement.

3. On 4.1.24 the FTT requested the following information from the applicant: • a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy ("AT6") • evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy ("AT6") being served by the landlord on the tenant • a copy of the notice to quit served by the landlord on the tenant (if applicable) • evidence of the notice to quit being served by the landlord on the tenant (if applicable) • evidence tending to show that the possession ground or grounds has been met • a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) • evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority.
4. In answer to this the applicant had provided an incomplete AT6 document missing the last page.
5. On 2.2.24 the FTT wrote to the applicant requesting the following information: 'Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following: 1. You have provided a copy of a Notice to Leave which is only applicable to a private residential tenancy. This tenancy appears to be an assured tenancy, therefore, the correct documentation would be a Notice to Quit and a Form AT6. You have not included a Notice to Quit, and the Form AT6 is undated and unsigned. It would appear to have been issued after the application was made. In the circumstances, you may wish to consider withdrawing the application and ensuring that the correct notices are served upon the Respondent before making another application. Serving a Notice to Quit can be a complicated matter, and you would be advised to take immediate legal advice. You should also be aware of the following: 2. Any application for an order for possession must be accompanied by a section 11 notice together with evidence of service of the notice on the local authority. 3. We would require to see evidence of service of the notices upon the Respondent, such as a recorded delivery posting receipt and tracking report, or sheriff officer certificate. 4. We would require evidence to support the ground of possession such as a rent statement showing rent due, rent paid and a running total of rent arrears. 5. We would expect to see evidence of compliance with the pre-action protocol, if available.'

6. In reply to this the applicant stated they would now be represented by a letting agent but did not provide their address. The applicant again provided the AT6 form dated 4.3.24, explaining this had been misdated when it was emailed to the tenant as 2023 rather than 2024. No evidence of how the document was sent to the tenant was provided, no S 11 notice was provided, no Notice to Quit was provided. No further reply has been received.
7. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

8. 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."

9. 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

10. 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.
11. The application was not accompanied by a valid Notice to Quit which meets the requirements for a notice to quit terminating the contractual relationship between parties of a tenancy under the Housing (Scotland) Act 1988. The applicant had provided a notice to leave document under the Private Housing (Tenancies) (Scotland) Act 2016, which is not a valid Notice to Quit under the Housing (Scotland) Act 1988. It does not contain the information required in terms of the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended for a valid Notice to Quit. It was also issued to 4.3.24, which is not an ish date for a tenancy commencing on 1.4.2017.
12. The applicant has not provided a valid AT6 document. The document provided gave no notice period and was dated 4.3.24, which is a date after the application was raised.
13. The applicant has not provided a S 11 notice although the FTT had advised on more than one occasion that this was required.
14. Rule 65 requires the lodging of a Notice to Quit with the application. The applicant has not lodged a Notice to Quit. She has lodged only a Notice to Leave, which is not valid for assured tenancies.
15. Rule 65 requires the lodging of a S 11 notice. This was explicitly pointed out to the applicant by the FTT. She has not provided a s 11 document.
16. Rule 65 requires the lodging of an AT6 form. No valid AT6 form was provided.
17. The application thus does not comply with the lodging requirements stated in rule 65 b (ii), (iii) and (v) of the Rules of Procedure.
18. 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
7 March 2024