



**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/23/4461

Parties

D.S. 2009 Property Ltd (Applicant)

Miss Adele McGinn (Respondent)

68 Main Street, Plean, FK7 8BU (House)

1. On 12.12.23 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. It mentioned as the ground for the application rent arrears and abandonment of the property.
2. In the course of further correspondence the following documents were provided by the applicant:
 - a) a tenancy agreement giving as the term 6 months beginning 1.1.2017 and thereafter continuing on a 6 months basis.
 - b) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016

stating as the ground breach of the tenancy conditions. The Notice to Leave is undated and unsigned and gives as the relevant date proceedings can first be raised 15.12.23. It did not provide the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.

- c) A photograph of a removal van
- d) Emails about the tenant not granting access to workmen
- e) A copy of an AT5 document

3. On 13.12.23 the FTT requested the following information from the applicant: • 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 replied: I have served a notice to the tenant which my governing body gave me. They gave me the wrong one but can send it to you. I don't need to do the homeless notice as she is in a new tenancy across the street from my property. I'll wait further information to proceed on.
5. On 22.2.24 the FTT wrote to the applicant requesting the following information: 'Before a decision can be made, we need you to provide us with the following: The Tribunal requested certain information from you in its e mail of 13th December. In your response you did not provide the information requested. Can you please provide the information requested including any documents requested within 14 days ? You have said that you need not intimate a notice to the local authority as the Respondent has other accommodation. Please note that legislation requires a landlord who is seeking a possession order for an assured tenancy to notify the local authority of the application for possession. Please reply to this office with the necessary information by 5 February 2024. If we do not hear from you within this time, the President may decide to reject the application.
6. The applicant asked on 29.1.24 what was still outstanding and the letter of 13.12.23 was re-sent.
7. On 5.2.24 the applicant wrote: No AT6as I was told not to by Scottish Association of Landlords I attached the notice to quit on a previous email today Adamson sheriff officers served the notice to quit or recorded delivery. I can find this and send it to you asap On an AT6 there is no

abandonment hence I am struggling with this. Section 11 not sent as she is not homeless she is in another rental across the street

8. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

9. 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."

10. 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

11. 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.
12. 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 undated, unsigned, no proof of service was provided and it was issued to the date of 15.12.23, which is not an ish date for the tenancy given the information in the tenancy agreement.
13. The applicant has not provided an AT6 document.
14. The applicant has not provided a S 11 notice although the FTT had advised on more than one occasion that this was required.
15. 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.
16. 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.
17. Rule 65 requires the lodging of an AT6 form. No AT6 form was provided.
18. The application thus does not comply with the lodging requirements stated in rule 65 b (ii), (iii) and (v) of the Rules of Procedure.
19. 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.



Legal Member
7 March 2024