



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 application by Ms Lynne McArthur in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/23/2956

At Glasgow on the 29 February 2024, 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) (c) of the Rules.

1. This is an application for eviction by Ms Lynne McArthur for eviction in terms of Rule 65 of the Rules.
2. The application was dated 18 August 2023 and received by the Tribunal on 29 August 2023.
3. The application was incomplete and the Applicant was sent a letter requesting further information on 10 October 2023 as follows:

Before a decision can be made, we need you to provide us with the following:

- You have made the application under rule 65 but you have not included the correct notice for that rule. If you intend to proceed under rule 66, which requires a notice to quit and section 33 notice, please provide an amended page of the application form and remove the reference to ground 10 in the application form.
- If you are proceeding under rule 66, please provide a copy of the Form AT5 served before commencement of the tenancy.
- If you intend to proceed under rule 65, please provide a valid Form AT6, and evidence to support ground 10, i.e. evidence that the Respondent has served notice to end the tenancy. • Please provide evidence of service of the notice to quit and section 33 notice on the Respondent.
- Please provide a copy section 11 notice and evidence of service upon the local authority, as previously requested.
- We cannot accept a care of address for the Applicant. Please provide their address.
- Please provide a mandate from the Applicant authorising you to make the application on their behalf.

- The application is affected by The Cost of Living (Protection for Tenants) (Scotland) Act 2022. Please see the information in the attached letter. Please reply to this office with the necessary information by 24 October 2023. If we do not hear from you within this time, the President may decide to reject the application.

4. The Applicant did not respond. A reminder was sent on 12 December 2023.
5. The Applicant responded on 13 December 2023 by sending a posting receipt. The Tribunal sent a further detailed request for information on 18 December 2023 as follows:

A Legal Member of the Tribunal has further considered your application and the further information you submitted on 13 December 2023, namely a posting receipt to the tenancy address dated 24 March 2021. It is presumed that this is in respect of the Notice to Quit and Section 33 Notice, both dated 8 March 2021 but please confirm and provide the delivery/‘signed for’ receipt from Royal Mail as it is noted that this was sent via the “track and trace” service. It appears that your application should be a Rule 66 application (termination of a short assured tenancy by serving notice). However, this does not tie up with the application which has been submitted under Rule 65, quoting ground 10 (where the tenant has served notice to end the tenancy but has then failed to leave). Nor have you submitted all the necessary documentation to allow a Rule 66 application to proceed, including a copy of the AT5 served at the commencement of the tenancy, nor a Section 11 Notice to the local authority. You also need to provide the address for the Applicant landlord as a care of address is generally not sufficient and also a mandate from the Applicant authorising you to act on their behalf in relation to this application. A copy of the Tribunal’s further information request of 10 October 2023 detailing the various requirements is attached. You have not responded to this request, other than submitting the postal receipt mentioned above. Please either now submit an amended application and the further documentation required within 14 days or your application will require to be rejected. If you wish to proceed under Rule 65 instead, you may wish to consider withdrawing this application and starting the eviction process afresh, with service of the appropriate notices. You can obtain guidance on the Tribunal website and you may also wish to consider obtaining legal advice.

6. The Applicant has not responded. I have reviewed this application today and I have decided to reject it.
7. Rule 8(1) (c) provides that the President must reject an application if they have good reason to believe it would not be appropriate to accept it. I have good reason to consider that it would not be appropriate to accept this application as it is incomplete and the Applicant has not responded to two detailed requests from the Tribunal for further information and a reminder. The Applicant has therefore failed to cooperate with the Tribunal in the execution of its duties.

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.



Legal Member