



**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/23/4125

Parties

Mr Graham Milne (Applicant)

Miss Lynne Leblanc (Respondent)

2 Malcolms Meadow, Kirkcaldy, KY2 6SN (House)

1. On 17.11.23 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 that the applicant had separated from his wife and required the property to move into it. The application was not accompanied by any documentation.
2. On 20.11.23 the FTT wrote to the applicant requesting the following information: • a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give • 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.

3. No reply was received and the same information was again requested by the FTT on 29.12.23. At this time the FTT also noted that there was a joint owner to the property and asked for confirmation from the joint owner that the action should be raised by the Applicant.
4. The Applicant at that stage replied that he had not retained any documentation and the joint owner provided an email dated 4.1.24 stating she gave the Applicant permission to deal with the application.
5. The FTT wrote again on 1.4.24 explaining: A Rule 65 application must be accompanied by the following: (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give; (ii) a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy; (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and (iv) evidence as the applicant has that the possession ground or grounds has been met; If you are unable to provide the above documentation, please withdraw the application
6. On 5.2.24 the Applicant replied stating that the tenant had been in the property for around 13 years and the tenancy was on a month to month basis. He stated he sent the paperwork he thought necessary but provided no details as to what this paperwork was or when and how it was sent.
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. He has not provided any details of what type of notice he may have sent and how.

12. He has not provided a copy of the tenancy agreement and in the absence of such a document he has not provided the essential information about the tenancy such as the start date, landlord, rent.
13. The applicant has not provided an AT6 document at all.
14. The applicant has not provided evidence that a ground listed in schedule 5 of the Housing (Scotland) Act 1988 applied in this case and has not specified the ground in the application. It is not a ground stated in the act that the landlord wishes to move into the property. The closest ground would be ground 1 of schedule 5 but the Applicant has not provided any information on whether the property was ever his only or principal home.
15. The applicant has not provided a S 11 notice.
16. The applicant had been advised that the above documents and information were necessary to make the application. He had been prompted to submit such documents and information repeatedly and has not done so.
17. The application does not comply with the lodging requirements stated in rule 65 a (iv) as it does not set out a possession ground stated in the legislation and b (i),(ii), (iii),(iv) and (v) of the Rules of Procedure as the required documents have not been provided.
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

6 March 2024