



**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/24/0399

Parties

Mr David Robert Kesson (Applicant)

Ms Janet McIntosh (Respondent)

Cochran Dickie Solicitors (Applicant's Representative)

19 Cardell Road, PAISLEY, PA2 9AG (House)

1. On 24.1.24 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. The application was accompanied by a tenancy agreement for the property commencing 29.10.15 with an initial period

29.4.15, a S 11 notice with proof of notification, a rent statement, a Notice to Quit document dated 4.12.23 stating as the date for the tenant to remove from the property 17.1.24 and an AT6 notice dated 4.12.23 with the date of 17.1.24 stated as the date before which proceedings would not be raised, both delivered by recorded delivery letter on 5.12.23. The AT6 notice gave as the ground for eviction ground 8A, which was also the ground stated on the application with an explanation that there are rent arrears. Correspondence to evidence that the pre-action requirements had been complied with were also included.

2. On 27.2.24 the FTT wrote to the Applicant. The letter stated: "In the notice to quit which has been provided, it is indicated that the tenant requires to quit the premises by 17 January 2024. Does the notice to quit specify a removal date which is an "ish" or end date of the tenancy? If not on what basis is the purported notice effective and valid in law? If the notice to quit is not valid then the eviction application would require to proceed solely on the basis of the provisions of sections 18 and 19 of the Housing (Scotland) Act 1988 and could proceed under rule 65 of the tribunal procedure rules. Please provide submissions showing that the tenancy agreement complies with the requirement of section 18(6) (b) of the 1988 Act. Does the tenancy agreement contain provision for it to be brought to an end on the grounds for eviction that are set out in the Form AT6 and , if so, do those provisions in the tenancy agreement meet the test set out in the case of Royal Bank of Scotland v Boyle (1999 Hous LR 63) . Please note the terms of the attached letter relating to the potential impact on your application of the Cost of Living (Tenant Protection) (Scotland) Act 2022 Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. "
3. On 28.2.24 the Applicant's representative wrote as follows: Please accept my apologies but I am a little confused by your email. In terms of the Sheriffs Court (Scotland) Act 1907 a Notice to Quit is required when serving an AT6. That legislation provides for a minimum notice period for the Notice to Quit of 40 days. Given the time of year, the tenant was given slightly more than 40 days notice which I would submit is anything but prejudicial to her. The end date entered in the AT6 matches the end date of the Notice to Quit as no action could be raised prior to the expiry of the Notice to Quit. Section 19(4) of the Housing (Sc) Act 1988 Act refers to minimum notice periods for an AT6 and therefore I would submit that the end date for the notice period should be that of the Notice to Quit. The ground for eviction are substantial rent arrears as per the AT6.
4. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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

7. 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.

8. The tenancy the Applicant submitted is an assured tenancy as it meets the requirements of S 1 of the Housing (Scotland) Act 1988. A contractual assured tenancy would have to be terminated by a valid Notice to Quit. The AT6 form provided ground 8A as the relevant ground, as does the application. In terms of s 18 (6) of the Housing (Scotland) Act 1988 the FTT shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – “(a) the ground for possession is ground 2 ...in Part I of Schedule 5 to this act or any grounds in Part “” of that Schedule other than Ground 9, Ground 10, Ground 15 or Ground 17... and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.” The tenancy agreement lodged makes no specific provision quoting the individual grounds under schedule 5 of the Housing (Scotland) Act 1988 and thus in this case a Notice to Quit terminating the contractual assured tenancy would be required and an AT6 form only could not suffice for a valid application to be made.
9. Rule 65 specifically requires the lodging of a Notice to Quit. An application would thus require a document which was at least on the face of it a valid Notice to Quit. The Applicant has not lodged a valid Notice to Quit. The Notice to Quit submitted did not constitute such a document. A Notice to Quit has to terminate the contractual tenancy to an ish date. The original term of the lease was 29.10.14 to 29.4.15. The Term of the tenancy in the tenancy document is stated as: “A term of 6 months commencing 29th October 2014 and ending 29th April 2015 and on a rolling basis thereafter until a new lease is signed or 2 month’s notice is given by either party on the same date the rent is due”. The tenancy agreement states that rent is payable “in advance by equal monthly payments paid on or before the 29th of each month”. It is thus clear that Notice to Quit would have to be given with a notice period of 2 calendar months on a 29th day of the month. The Notice to Quit was dated 4.12.23, served on 5.12.23 and stated as the end date 17.1.24. It did not give the 2 month’s notice period stated in the tenancy agreement and was not issued on a 29th day of the month, which would be the requirement in terms of the tenancy agreement. It is thus not a valid Notice to Quit and thus does not provide the document required in terms of rule 65.
10. The Tribunal had explicitly raised both the issue of the ish date and the issue of the provisions of S 18 (6) of the Housing (Scotland) Act 1988 in the letter requesting further information and provided the opportunity to make further representations. These have been taken into account but did not provide an answer as to how the date on the Notice to Quit would constitute a valid ish date for the tenancy taking into account the terms of the tenancy agreement.
11. For the reasons stated above it would not be appropriate for the Tribunal to accept the application without the required Notice to Quit and it is therefore rejected.

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
21 March 2024