



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 an application by Mr James Clark of James Clark Properties in terms of rule 65 of the rules.

At Glasgow on the 3 June 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)(a) and (c) of the Rules.

1. This is an application by Mr James Clark of James Clark Properties, owner of the property at ‘the property’, for recovery of possession of the property in terms of Rule 65 on ground 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 (the tenant has persistently delayed paying rent and some rent is unpaid at the start of the proceedings).
2. The application was dated 10 April 2024 and received by the Tribunal on 10 April 2024.
3. The application was accompanied by the following:
 - Tenancy agreement
 - AT5
 - Section 11 notice
 - Rent statement
 - AT6.
4. The inhouse convenor reviewed the application and the Tribunal wrote to the applicant on 2 May 2024 as follows:

Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:

(1) Please provide a copy of a valid notice to quit served upon the Respondent. If you have not served a notice to quit, you should consider withdrawing the application, as the terms of the tenancy agreement do not allow you to end the contractual tenancy without serving a notice to quit. You may wish to take advice on ending the contractual tenancy as this can be a complicated matter.

- (2) You may wish to consider whether service of a Form AT6 by email is a valid method of service in the absence of any express agreement between the parties that notices can be served in that manner.
- (3) We would expect to see evidence of service of the section 11 notice upon the local authority.'

5. The applicant responded on 2 May 2024 with proof of service of the AT6 and section 11 notice. No notice to quit was provided.
6. The Tribunal sent a further request for information on 22 May 2023 as follows:

You were asked to provide a copy of the notice to quit served upon your tenant. You have provided a copy of a blank notice. Please provide a copy of the signed and dated notice served upon the tenant. The tribunal requires to see the signed and dated version to enable the tribunal to ascertain whether the notice gives the appropriate period of notice to the tenant and that the date upon which the tenant is being asked to leave is the correct date based upon the tenancy agreement. If you are unable to provide this document then the tribunal may not be able to progress this application. We would strongly suggest that you seek independent legal advice on the issues contained in this letter prior to responding. 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. Please respond to this letter within the next two weeks. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

7. The applicant sent a copy of the notice to quit on 22 May 2024.
8. The notice to quit is invalid. The tenancy is for the initial period of 23 November 2017 until 23 May 2018 and month to month thereafter. The notice to quit is dated 14 March 2024 and states that the tenant is required to leave the property by 1 April 2024. The 1 April is not an ish date. There is a further difficulty with the notice to quit as the required minimum period of 40 days has not been given.
9. Even if the notice to quit is invalid, the applicant could still rely on the terms of s19 of the Housing (Scotland) Act 1988 ('the Act') and proceed on the basis of the AT6, but the tenancy agreement does not narrate the terms of schedule 5 of the Act.
10. Section 18 of the Act provides :

Orders for possession.

(1)The **[F1First-tier Tribunal]** shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

[F2](#)(3).

[F3](#)(3A).

(4)If the [[F4](#)First-tier Tribunal] is satisfied that any of the grounds in [[F5](#)Part I or II] of Schedule 5 to this Act is established, [[F6](#)the Tribunal] shall not make an order for possession unless [[F6](#)the Tribunal] considers it reasonable to do so.

[[F7](#)(4A)In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the [[F8](#)First-tier Tribunal] shall have regard, in particular, to]—

[[F9](#)(a)]the extent to which any delay or failure to pay rent taken into account by the [[F8](#)Tribunal] in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit [[F10](#)or relevant universal credit] [[F11](#)], and

(b)the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.]

(5)Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6)The [[F12](#)First-tier Tribunal] 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 [F13](#)... in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 [F14](#)... Ground 10 [[F15](#), 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.

[[F16](#)(6A)Nothing in subsection (6) above affects the [[F17](#)First-tier Tribunal] 's power to 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, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.]

(7)Subject to the preceding provisions of this section, the [[F18](#)First-tier Tribunal] may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

[[F19](#)(8)In [[F20](#)subsection (4A)] above—

(a)“relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

[F21(aa)“relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;]

(b) references to delay or failure in the payment of relevant housing benefit **[F22**or relevant universal credit] do not include such delay or failure so far as referable to any act or omission of the tenant.]

[F23(9)Regulations under subsection (4A)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).]

11. Section 18(6) of the Act allows the Tribunal to grant an order for recovery of possession where a contract has not been terminated. As the notice to quit provided is not valid, the contract has not come to an end and section 18(6) could apply. In the case of Royal Bank of Scotland-v- Boyle 1999 Hous LR 43 it was established that for an application based on s18(6) to succeed the essential ingredients of the ground relied upon must be referred to in the tenancy agreement. The tenancy agreement provided with this application does not specifically refer to ground 11 and 12 or narrate their terms.

12. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if “*they consider that an application is vexatious or frivolous*”. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall) Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”.

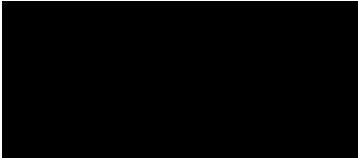
13. I consider that this application is hopeless and has no reasonable prospect of success as the notice to quit is invalid and the AT6 cannot be relied on, as the tenancy agreement does not narrate the eviction grounds.

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.



Lesley Anne Ward

Legal Member