



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

Case Reference: FTS/HPC/EV/24/1598

17 Orchard Street, Ballieston ("the Property")

Martin Weir, 34 Swinton Avenue, Ballieston ("the Applicant")

Joanne Naismith, 17 Orchard Street, Ballieston ("the Respondent")

1. The Applicant seeks an order for possession in terms of Rule 65 of the Procedure Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A Notice to leave and part of a short assured tenancy agreement dated 2016 were lodged with the application.
2. The Tribunal issued a request for further information and documents to the Applicant. The Applicant was directed to provide a copy of the Notice to Quit, AT6 notice and section 11 notice. The Tribunal noted that a Notice to leave had been submitted but that this is not a valid notice in connection with an assured tenancy. The Applicant did not respond to the request or to a reminder issued by the Tribunal.

Decision

3. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application."

Reasons for Decision

4. Rule 5 of the Procedure Rules states that an application "is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as

set out in...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.

5. The application appears to have been submitted with the wrong Notice. The tenancy agreement lodged is a short assured tenancy agreement dated 2016. The application should have been accompanied by a Notice to quit and an AT6, not a Notice to Leave which only relates to private residential tenancies under the 2016 Act. The Applicant has been offered the opportunity to address the issue and either lodge the documents required by Rule 65 or withdraw the application, but has failed to do so.

6. The Applicant has failed to comply with Rules 5 and Rule 65 of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.

Josephine Bonnar, Legal Member

21 July 2024