



**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/24/1733

Parties

Mr Scott Thompson (Applicant)

Mrs Alana Reid, Mr Michael Reid (Respondent)

Edinburgh Letting Centre (Applicant's Representative)

15/1 Mallard Walk, Prestonpans, East Lothian, EH32 9GD (House)

1. On 16.4.24 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. It mentioned as the ground for the “Landlord’s immediate family member intends to live in the property as main principled home”. The application was only accompanied by the following documents:
 - a) A tenancy agreement commencing 17.1.17 with an initial ish of 18.7.17 (clause 2).

- b) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016 stating as the ground “Your landlord’s family member intends to live in the Let Property”. The notice to Leave is dated 10.1.24 and states as the date proceedings can first be raised 6.4.24. It did not provide the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.
 - c) A S 11 notice without proof of it having been sent to the local authority.
 - d) A letter from the landlord to the agent stating his son will be moving into the property.
2. On 14.5.24 the FTT wrote to the applicant in the following terms: Your application has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters Your application seeks an eviction order in respect of a tenancy which appears to be a short assured tenancy in terms of the Housing (Scotland) Act 1988. You have enclosed with your application a “notice to leave” which is the form of notice to be served upon tenants who have a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 The required forms of notice to terminate a short assured tenancy are entirely different and require to conform to the requirements set out in the 1988 Act.. There is no eviction ground in the 1988 Act which allows a landlord to seek recovery of possession of a tenancy on the basis that a family member of the landlord wishes to live in the property. Can you please advise whether you have served the appropriate forms of notice to terminate a short assured tenancy and if so exhibit them to the tribunal. If you have not served the correct notices, please confirm you wish to withdraw this application You may find it useful to seek independent legal advice on this application and the matters contained in this letter 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.
3. The FTT gave as the relevant date for a reply 28.5.24.
4. The FTT wrote again on 14.8.23 stating: Your applications have been further reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President. It is noted that you have failed to provide the further information requested by email dated 14 May 2024. We now write to advise you that if you fail to provide this information within the next two weeks the tribunal will have no option but to reject your applications. 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.

5. The FTT gave 2 weeks for a reply.
6. No reply to the two letters has been received.
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

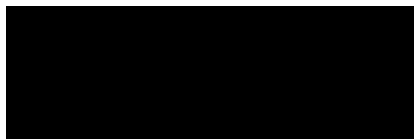
10. The Application is made in terms of Rule 65 of the Rules of Procedure. This relates to orders for possession in relation to assured tenancies under S 18 (1) of the Housing (Scotland) Act 1988.
11. The application was not accompanied by a valid Notice to Quit which meets the requirements for a notice to quit terminating the contractual relationship between parties of a tenancy under the Housing (Scotland) Act 1988. The applicant provided a notice to leave document under the Private Housing (Tenancies) (Scotland) Act 2016, which is not a valid Notice to Quit under the Housing (Scotland) Act 1988. It does not contained the information required in terms of the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended for a valid Notice to Quit.
12. The applicant has not provided an AT6 document at all.
13. The applicant has not provided evidence that a ground listed in schedule 5 of the Housing (Scotland) Act 1988 applied in this case. He relied on ground 5 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016w which does not apply to an assured tenancy entered into prior to the commencement of the said 2016 Act. He has not pled a valid ground of eviction in the application. He has thus also not provided any supporting evidence that a valid ground applies.
14. Rule 65 requires the lodging of a Notice to Quit evidence that a ground stated in schedule 5 of the Housing (Scotland) Act 1988 applies. The Applicant has not lodged a Notice to Quit. He has lodged only a Notice to Leave, which is not valid for assured tenancies. He has not stated a valid ground under the 1988 Act and not provided any evidence that such a ground applies.
15. Rule 65 requires the lodging of an AT6 form. No AT6 form was provided.
16. The application thus does not comply with the lodging requirements stated in rule 65 b (ii), (iii) and (iv) of the Rules of Procedure. The applicant has further ignored any request by the Tribunal to provide the further information to allow the Tribunal to deal with his application.
17. For the reasons stated above it would not be appropriate for the Tribunal to accept the application because the application 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

1 August 2024