



**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 Robert John Paton Maxwell and Mrs Sheila Maxwell in terms of rule 66 of the rules.**

**Reference FTS/HPC/EV/24/1291**

At Glasgow on the 12 August 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) (c) of the Rules.

1. This is an application by Mr Robert John Paton Maxwell and Mrs Sheila Maxwell owners of the property at 52 Linn Avenue Largs Ayrshire KA30 9JU ‘the property’, for recovery of possession of the property in terms of Rule 66.
2. The application was dated 18 March 2024. There was a separate application in terms of rule 65.
3. The in-house convenor reviewed the application and the Tribunal sent a request for further information on 12 April 2024 as follows:

Before a decision can be made on FTS/HPC/EV/24/1290, we need you to provide us with the following:

- Please provide a signed and dated copy of the AT6 along with proof of service on the Respondent.
- Please confirm the Ground relied upon. Ground 10 only applies where the tenant has served the landlord a Notice to Quit and has not vacated the Property. The reference in the AT6 is to recovery of possession on termination of a short assured tenancy (Rule 66) which is not one of the Grounds in Schedule 5 to the 1988 Act. You may wish to consider withdrawing this application.
- Please provide proof of service of the Notice to Quit and Section 33 Notice on the Respondent.
- Please provide a copy of the section 11 Homelessness Notice along with proof of service on the local authority.
- Please provide proof of landlord registration.
- Please provide a signed and dated copy of both the Notice to Quit and Section 33 Notice.

Before a decision can be made on FTS/HPC/EV/1291, we need you to provide us with the following:

- Please provide proof of service of the Notice to Quit and Section 33 Notice on the Respondent.
- Please provide a copy of the section 11 Homelessness Notice along with proof of service on the local authority.
- Please provide proof of landlord registration.
- Please provide a signed and dated copy of both the Notice to Quit and Section 33 Notice.

Please reply to this office with the necessary information by 26 April 2024. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

4. The applicant responded on 26 April 2024 as follows:

I have tried to reply to this and provide all information. I am not a lawyer and find this extremely stressful, but I am doing my best to move matters on. Taking your points in turn...

- I attach a copy of the recorded delivery letter and subsequent e mails. The tenant acknowledged this and forwarded on to North Ayrshire Council who eventually accepted it. They contacted me directly and advised that I would have to the Court to obtain possession of my property.
- I am not sure how to proceed here. Our intention is to sell the property as we cannot afford to run it anymore due to increasing costs. To do so we must repossess as the tenant has refused to leave at the end of the tenancy. Have I made a mistake in ticking both boxes on the "Form E"?
- The Section 33 Notice is with the "Notice to Quit" and dated 25th September. This was sent at the same time as the Notice to Quit by E Mail and Recorded Delivery and, again acknowledged by the tenant and North Ayrshire Council.
- Attached are Section 11 Notice and Copy of E Mail to North Ayrshire Council.
- Proof of Landlord Registration • Signed Copy of NTQ and Section 33 attached. I think that is all you require but again I find this process most confusing and stressful so please for give me if I have missed or misunderstood anything. I look forward to hearing from you.

5. The in-house convenor reviewed the application and the Tribunal wrote to the applicant by email on 20 May 2024 as follows:

Before a decision can be made, we need you to provide us with the following:

- We asked you for proof of service of the notice to quit and section 33 notice. You have told us they were served by recorded delivery. Please therefore provide proof of posting and proof of delivery.
- The notice to quit and section 33 notice are dated 25 September 2023. Please clarify why you have sent us a copy of an email to the tenant dated 5 July 2023 sending the notices.

Please reply to this office with the necessary information by 3 June 2024. If we do not hear from you within this time, the President may decide to reject the application.

6. The applicant has not responded. A reminder was sent on 1 July 2024. The applicant has not responded.

7. Rule 8(1)(c) of the Tribunal Rules requires the President to reject an application if they have good reason to believe it would not be appropriate to accept it. I consider I have good reason to believe it would not be appropriate to accept this application.

The application is incomplete and it appears that the applicant has not served the appropriate notices. Further, the applicant has failed to respond to a reasonable request by the Tribunal for further information and a reminder. The applicant has therefore failed to cooperate with the Tribunal in the execution of its duties. It is open to the applicant to make a new application once he has served the correct notices.

**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