



**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/24/3230

**Parties**

**Mr Paul Burns (Applicant)**

**Miss Carly Dalrymple (Respondent)**

**Empire Property and Lettings Ltd (Applicant's Representative)**

**60 Millgate Crescent, Caldercruix, ML6 7QZ (House)**

1. On 15.7.2424 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. Under grounds the applicant stated grounds 11 and 12 of schedule 3 of the Housing (Scotland) Act 1988. The sole applicant was Paul Burns. The application was only accompanied by the following documents:

- a) a form AT6 stating grounds 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 (the 1988 Act), which was dated 1.6.24 and gave as the end date when proceedings could be raised 15.6.24. This was accompanied by a recorded delivery postage receipt dated 31.5.24 and a track and trace confirmation of service on 1.6.24 on the recipient.
  - b) Tenancy agreement for a tenancy commencing 30.9.14, showing Paul Burns and Mary Burns as joint landlords.
  - c) S11 notice and service email.
2. On 21.8.24 the FTT wrote to the applicant. The FTT requested the following:
- Please provide a mandate from the applicant authorising you to act in this matter.
  - The tenancy agreement shows joint landlords but your application bears to run in the name of only one of them. Please provide an amended application from or explain why such an application in the name of only one joint landlord can proceed.
  - You were asked to provide a copy of the notice to quit which was served on the tenant. You have not done so. Please advise whether this application is proceeding solely on the basis of the provisions of sections 18 and 19 of the Housing (Scotland) Act 1988.
  - The form AT6 which you have submitted seems to be dated 1 June 2024 but was apparently posted on 31 May 2024. Can you please explain this discrepancy?
  - With regard to this application, please provide evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. What steps have been taken in conjunction with the tenant to manage arrears prior to commencing proceedings for repossession on the grounds of rent arrears
- The tribunal would suggest that you may find it useful to seek independent legal advice on this application, the matters contained in this letter and any further action which you wish to take. 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 reply to this office with the necessary information by 4 September 2024.
3. By 2.10.24 no reply has been received.
  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

1. 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.
2. The application was not accompanied by a valid Notice to Quit.
3. The AT6 document is dated 1.6.24 and states as the date when proceedings could first be raised 15.6.24. It is not clear how the recorded delivery of the notice could have validly been commenced on 31.5.24, a date prior to the date of the AT6 notice.
4. The application is made in the sole name of Paul Burns. The tenancy agreement and the title deeds show that there is a joint landlord and owner of the property, Mary Burns. In terms of s 55 (3) of the 1988 Act "Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, any reference in this Part of this Act to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord or the tenant, as the case may require." Rule 65 of the Rules of Procedure requires the application to state the name and address of the landlord. The landlord in terms of S 55 (3) is both individuals and the application only contained the information for one of the joint landlords.
5. The application thus does not comply with the lodging requirements stated in rule 65 of the Rules of Procedure.
6. For the reasons stated above it would not be appropriate for the Tribunal to accept the application as this does not fulfill the lodging requirements of a valid application of rule 65. The applicant had been given ample opportunity to seek legal advice and provide further information and documentation but had not replied to the request for further information and thus appears to no longer insist on the 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 McFatrige  
Legal Member  
2 October 2024