



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/24/0128

Parties

Edwin Parker (Applicant)
Rachel Rae (Respondent)

17c Kingston Road, Neilston, Glasgow, G78 3JA (House)

1. By application received by the Tribunal on 11 January 2024 the Applicant sought an eviction order against the Respondent. The application was made under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. Following receipt of the application the Tribunal wrote to the Applicant by email dated 8 February 2024 in the following terms:-

“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. *You have raised this application under Rule 65, which refers to an assured tenancy. Although you state that the tenancy commenced in October 2010, you have provided a more recent tenancy signed in October 2022. It is not clear if the tenancy continues to be a short assured tenancy in terms of the savings provisions, as the additional tenancy document you have provided does not show the date of commencement of the original tenancy or the terms of the tenancy. It is therefore impossible to ascertain whether the short assured tenancy continues or whether a private residential tenancy has been put in place. The requirements for serving notices, and the type of notices to be served, is different for each type of tenancy. Please provide a signed copy of the original tenancy document showing the terms of the tenancy.*
2. *If this is an assured tenancy, the following would be required under Rule 65:*
 - (i) *A Notice to Quit served to an ish date of the tenancy before the application was made, and giving the correct period of notice.*

- (ii) *A Form AT6 served before the application was made, giving the correct period of notice.*
3. *You have lodged a section 33 notice, which is not required for a Rule 65 application.*
 4. *You have not lodged a section 11 notice with evidence of service upon the local authority.*
 5. *You refer to ground 8 in the application form, but ground 8 has been repealed.*
 6. *You have not provided any evidence of compliance with the pre-action protocol.*

You may wish to take advice on this matter before responding.”

3. On 18 February 2024 the Applicant sent an amended Form E application to the Tribunal via email with a section 33 notice. The Applicant further indicated that he had sent the amended attachments to the application form via post.
4. On 14 March 2024 the Tribunal wrote again to the Applicant via email in the following terms:-

“Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member responds as follows:

1. *Please provide a response to the points raised by the tribunal in the email to you of 9 February 2024.*
2. *The amended documents you refer to have not been received by post and are illegible in the email attachments to your email of 18 February.*

Please reply to this office with the necessary information by 28 March 2024. If we do not hear from you within this time, the President may decide to reject the application.”

5. The Applicant again provided further documentation in support of the application. On 29 May 2024 the Tribunal responded to the Applicant by email in the following terms:-

“Your further information 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. *You have now amended the application to Rule 66, however, you have not provided the following, as requested:*

- (i) A copy of the original tenancy agreement in order to ascertain whether this is a short assured tenancy which has been continued under the savings provisions.*
 - (ii) A Notice to Quit served to an ish date of the tenancy together with evidence of service. If this has not been served, please consider withdrawing the application as it cannot be accepted without a Notice to Quit.*
 - (iii) Evidence of service of the section 33 notice upon the Respondent.*
 - (iv) A section 11 notice with evidence of service upon the local authority.*
 - (v) Evidence of compliance with the pre-action protocol – this is not mandatory, but will be taken into account when considering reasonableness if the application is accepted.”*
6. The Applicant emailed the Tribunal on 11 June 2024 advising that he had submitted a copy of the section 33 form and a copy of the tenancy agreement. He asked for an extension to the deadline for providing a response to enable him to seek legal advice. The Tribunal granted said extension by email dated 14 June 2024 and allowed a further period of three weeks for the Applicant to respond.
7. The Tribunal received no further reply from the Applicant. On 18 July 2024 the Tribunal wrote to the Applicant via email noting that he had failed to provide the further information requested and advising that in the absence of said information the Tribunal would have no option but to reject the application. The Tribunal requested a response from the Applicant by 1st August 2024. No further correspondence was received from the Applicant.
8. Rule 8(1)(c) of the Rules allows an application to be rejected by the Chamber President if “they have good reason to believe that it would not be appropriate to accept the application”. The Applicant has failed to provide the information requested by the Tribunal which is a requirement of Rule 65. The Tribunal cannot therefore satisfy itself on the basis of the information before it that the application complies with the statutory requirements. The Applicant has been asked for the information on several occasions and has been given the opportunity to take legal advice. He has been made aware of the consequence of a failure to respond. Accordingly in the absence of any further information from the Applicant it would not be appropriate to accept the application and the application must be rejected.

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.

Ruth O'Hare, Legal Member
26 August 2024