



**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/24/2955

**Parties**

**Miss Yvonne Smith (Applicant)**

**Mr John Anthony Cattigan (Respondent)**

**23 Burghlee Terrace, Loanhead, Midlothian (House)**

1. On 28.6.24 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. Under grounds the applicant stated: “ground 2: there is a mortgage over the house and the lender, for example a bank or building society, is entitled to sell the house because the landlord have not abided by the conditions of the mortgage”. The application was only accompanied by the following documents:
  - a) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016

dated 29.3.24 on ground 1A of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act).

- b) a form AT6 stating ground 2 of schedule 5 of the Housing (Scotland) Act 1988 (the 1988 Act).
  - c) Correspondence regarding a lifetime mortgage over the property for the late Evelyn Smith
  - d) Confirmation issued on 7.9.23 in the name of the applicant for the estate of the late Evelyn Smith
  - e) Last Will and Testament of the late Evelyn Smith
  - f) Tenancy agreement dated 30.3.18
2. On 1.7.24 and 29.7.24 the FTT wrote to the applicant. The FTT requested the following: 1. *If the tenancy agreement started in 2018, as is stated on the document submitted, then the application is made under the wrong rule. Rule 65 applies to tenancies under the Housing (Scotland) Act 1988 and not to Private Residential Tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. Please clarify the start date and amend the application if the tenancy agreement started in 2018.* 2. *If the tenancy is a Private Residential Tenancy and you are amending the application to rule 109 please provide:* • *The Notice to Leave with proof of how and when this was served on the tenant.* • *A copy of the S 11 notice given to the local authority. Evidence of how and when the S 11 notice required in S 56 of the 2016 Act was given to the local authority.* • *Evidence of the ground applying: you state that this is under ground 2. However, an application under ground 2 would have to be made by the creditor, not the landlord. Ground 2 of schedule 3 of the 2016 Act states: 2(1)It is an eviction ground that a lender intends to sell the let property. (2)The First-tier Tribunal [F1may] find that the ground named by sub-paragraph (1) applies if— (a)the let property is subject to a heritable security, (b)the creditor under that security is entitled to sell the property, F2... (c)the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession [F3, and (d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.]* 3. *The property does not appear to be registered. Please provide evidence of your landlord registration.* 4. *If you are making the application under rule 65 please explain why you consider the*

*tenancy is an Assured Tenancy and provide evidence of a Notice to Quit having been served on the tenant, the S 11 notice and proof of how and when this was given to the local authority and again, if you are relying on ground 2 the same issue as above arises because it is the creditor who would have to make the application. You are strongly advised to seek legal advice as this is a legal process, which you may not be familiar with. The Tribunal cannot provide such advice. The way the application is made at present means that it would have to be rejected. Please reply within 14 days with regard to the above or consider whether you may wish to withdraw the application and re-raise it once you have complied with all requirements for a valid application.*

3. On 9.8.24 the applicant asked for an extension for a reply to the Tribunal's request. She was advised that she would be able to reply until 31 August 2024. 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 Notice to Leave document stated that the Respondent had lived in the property since 1.11.2026 but the tenancy agreement produced was dated 30.3.2018. It is not clear which legislation applies to this case and the attempts to clarify this had not resulted in a reply from the applicant.
2. 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.
3. The application was not accompanied by a valid Notice to Quit which meets the requirements for a notice terminating the contractual relationship between parties of a tenancy under the Housing (Scotland) Act 1988. She 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. Neither it nor the AT6 document sent 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. Thus no Notice to Quit for the tenancy agreement has been produced. The requirement for a Notice to Quit cannot be dispensed with in this case because the tenancy agreement did not make provision for it to be brought to an end on the ground in question as required by s 18(6) of the 1988 Act.
4. The AT6 document is dated 25.6.24 and states as the date when proceedings could first be raised 22.6.24. It is not clear how such a notice could be valid with only giving 3 days notice period. The statutory requirement is at least 14 days. The AT6 document is invalid. There was also no evidence about when and how it was served.
5. Rule 65 requires the lodging of evidence that the possession ground has been met, no such evidence was provided. The AT6 document provided refers to a ground which is not available to a private landlord, ground 2. The ground is only available to a lender.

No evidence was produced that would show the applicant could base an application on that ground.

6. Rule 65 requires the provision of a S 11 notice. No such notice was produced.
7. The application thus does not comply with the lodging requirements stated in rule 65 of the Rules of Procedure.
8. If one considered that the application may have to have been made under rule 109 the lodging requirements again were not met. There was no S 11 notice, which is required in order to make a valid application.
9. 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 either rule 65 or rule 109. The applicant had been given ample opportunity to seek legal advice provide clarification of the tenancy type and to produce the documents required to meet the lodging requirements for either type of application and had not replied to the request for further information.

### **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  
24 September 2024