



**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/24/3502

Parties

Ms Erica Muirhead, Ms Margot Newman (Applicant)

Mr Rolandys Vicys (Respondent)

23A Hardgate, Haddington, EH41 3JS (House)

1. On 18.9.24 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an order for possession under Rule 66 of the Procedural Rules and s 18 of the Housing (Scotland) Act 1988. It mentioned as the ground for the Case 5-Property to be sold. The application was only accompanied by the following documents:
 - a) A tenancy agreement for a named other individual commencing 30.7.13 with an initial ish of 29.1.14 and with AT5 for that individual attached. This did not mention the Respondent as a tenant.

- b) a Notice to Leave form under the Private Housing (Tenancies) (Scotland) Act 2016 stating as the ground “Your landlord intends to sell the Let Property”. The notice to Leave is undated and unsigned and states as the date in part 4 21.5.24. The document did not provide the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.
 - c) A blank S 11 notice without proof of it having been sent to the local authority.
 - d) A letter from the Respondent acknowledging receipt of the notice on 26.2.24.
2. On 26.8.24 the FTT wrote to the applicant in the following terms:. A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:
- 1. The AT5 document and the tenancy agreement refer to the tenant as Vaida Viciene. Please provide the tenancy agreement for the Respondent.
 - 2. Please consider whether the application is made under the correct rule. You have applied for an order under rule 66, which relates to tenancies under the Housing (Scotland) Act 1988. However, you state the tenant did not move into the property until 22.5.2020. At that time new tenancies created could no longer be tenancies under the Housing (Scotland) Act 1988 but are Private Residential Tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. You have submitted a Notice to Leave, which would be the correct form of notice under the 2016 Act but would not apply to any tenancy under the 1988 Act. Please clarify.
 - 3. If you think that the application should be under rule 66, please send the relevant tenancy agreement, a Notice to Quit and proof of service, a S 11 notice with the correct details indicated and proof of service and a S 33 notice with proof of service together with the AT5 document to the Respondent.
 - 4. If you are of the view that the application should be under the 2016 Act you would have to amend the application to the correct rule and state the correct ground. Ground 5 of schedule 3 of the 2016 Act is NOT that the owner wishes to sell the property but that a family member wishes to move into the property. Thus you would have to amend the ground on the application to the correct ground in schedule 3. You may wish to seek advice on the matter, which the Tribunal cannot provide.
 - 5. If you are amending the application to the process under the 2016 legislation you would have to provide the Tenancy Agreement, a signed copy of the Notice to Leave stating the date on which it was issued and a fully completed S 11 notice with proof of how and when this was given to the local authority as well as evidence of how the ground stated on the application applies in this case. Please note that Ground 1 (3) states:” (3)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)— (a)a (b)a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”
 - 6. Please provide evidence of your landlord registration. Please be advised that in the current form the application would have to be

rejected under rule 8 as incomplete and not meeting the lodging criteria. The decision would then be published on the Tribunal's public list of decisions. You may wish to seek legal advice on the matter.

3. On 4.9.24 the Applicants replied "1. The tenancy was originally taken out by the tenant and his then wife. They split up. She moved away and he requested to stay on in the flat. He signed to advise he was happy to take on the tenancy from 22-5-20. Hence the tenancy agreement was in his wife's name. 2. We had taken the commencement of the tenancy when he and his wife took on the original tenancy. Hence the rule 66. If it is not this, what should we apply for it under? 3. We understood the documents we previously submitted(also attached here) are the documents you were looking for.". They provided a further copy of the Notice to Leave and Tenancy Agreement as well as evidence of the landlord registration stating as the landlord not the Applicants but Tekapo Properties. No explanation was provided as to how the Applicants are connected to said registered landlord. The Applicants further provided an amended Form E, altering the application to a rule 65 application. They provided no further documents.
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

7. The Application is now 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. It requires for the application to be accompanied by an AT6 notice, the tenancy agreement, a S 11 notice and a Notice to Quit.
8. 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 Applicants 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.
9. The Applicants have not provided an AT6 document at all. The Applicants only provided a blank S 11 notice and no evidence of this having been given to the local authority.
10. The Applicants have not provided evidence that a ground listed in schedule 5 of the Housing (Scotland) Act 1988 applied in this case. They relied on what they describe as "Case 5 – The property is to be sold. This is not a ground under schedule 5 of the Housing (Scotland) Act 1988.
11. Initially the application was made under rule 66. A rule 66 application requires to be

accompanied by a Notice to Quit, a S 33 notice, a S 11 notice, the tenancy agreement and the AT5 notice. As set out in the letter to the Applicants, the documents did not meet the lodging requirements for rule 66 as there was no AT5 to the Respondent, no tenancy agreement with the Respondent under the Housing (Scotland) Act 1988, no completed S 11 notice and proof of service and no Notice to Quit, because what was lodged was a Notice to Leave (see above). No S 33 notice was provided.

12. The Applicants state that the tenancy may have commenced in 202, which would then make it a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act. The Applicants were advised that if they did wish it to be treated as a PRT, they would have to amend the application to the appropriate rule. Applications for eviction orders under the 2016 Act can be made under rule 109. Rule 109 applications have to be accompanied by a Notice to Leave, a S 11 notice and evidence that the ground is met. The Applicants did not amend the application to rule 109, they did not provide a completed S 11 notice and they did not provide a completed Notice to Leave. The S 11 notice was blank, the Notice to Leave unsigned and undated. The Applicants did not provide any evidence as set out in ground 1 (3) of schedule 3 of the 2016 Act that the ground stated on the Notice to Leave, sale of the property, applied. The Applicants did not provide any documentary evidence that a PRT had been entered into by the Respondent as they did not provide whatever document they referred to when stating "He signed to advise he was happy to take the tenancy from 22-5-20."
13. The Applicants had been encouraged to seek legal advice and had been given the opportunity to amend the application and lodge further documents in the letter of 26.8.24. However, the application does not comply with the lodging requirements stated in rule 65, rule 66 or rule 109 of the Rules of Procedure.
14. For the reasons stated above it would not be appropriate for the Tribunal to accept the application under any of the rules quoted, because the application does not fulfill the lodging requirements of a valid application for those rules.
15. This decision does not prevent the Applicants to make a further application once they have all documents required for an application to the FTT.

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

Petra Hennig McFatridge
Legal Member
21 October 2024