



**Decision Under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) by a Legal Member with delegated powers from the Chamber President**

Case reference FTS/HPC/EV/24/1633

**Parties**

**Christopher Wieczorek (Applicant)  
Annaliese Ward-Birky (Respondent)**

**42 California Road, Maddiston, Falkirk, FK2 0NP (House)**

1. By application dated 8 April 2024 the Applicant sought an eviction order under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).
2. Following review of the application by a Legal Member of the Tribunal with delegated powers of the Chamber President the Tribunal wrote to the Applicant in the following terms:-

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

- *You have stated in the application form that eviction is sought on ground 10. Ground 10 can be relied upon where the tenant has given notice to quit and has remained in the property. However it appears that you have in fact served a Notice to Quit on the tenant and a notice under section 33 of the Housing (Scotland) Act 1988. Section 33 of the Housing (Scotland) Act 1988 can be relied upon where the landlord is bringing a short assured tenancy to an end. An application under section 33 is brought under Rule 66. You have selected Rule 65 on the application form. Please clarify the basis upon which eviction is sought and provide an amended application form if it is your intention to proceed under section 33.*
- *Please provide a copy of the Form AT5 that was served upon the tenant prior to the signing of the tenancy agreement. A Form AT5 is the notice that is given to a tenant to advise them that the tenancy being entered into is a short assured tenancy.*

- Please provide a full copy of the tenancy agreement. The version you have provided appears to be missing the first page(s). The Tribunal will require to see this in order to consider whether the notices have been correctly served.

- Please provide evidence of service of the notices upon the tenant, e.g. recorded delivery postal receipt, sheriff officers certificate.

- Please provide a copy of the notice under section 11 of the Homelessness etc (Scotland) Act 2003 served on the local authority together with evidence of service, e.g. covering email, postal receipt.

*You may wish to take legal advice prior to providing your reply. If you cannot obtain advice from a solicitor there are free advice services available and you can find links to some of these under the “useful links” button on the Housing and Property Chamber website.”*

3. On 27 May 2024 the Applicant responded by email. He provided a rent increase form under section 24 of the Private Housing (Tenancies) (Scotland) Act 2016, a copy of the Form AT5, the signing page of the tenancy agreement and a copy of the Notice to Quit.

4. On 18 June 2024 the Tribunal emailed the Applicant again in the undernoted 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, which were previously requested and have not been answered. We must have this information before the application can be accepted:*

- *You have stated in the application form that eviction is sought on ground 10. Ground 10 can be relied upon where the tenant has given notice to quit and has remained in the property. However it appears that you have in fact served a Notice to Quit on the tenant and a notice under section 33 of the Housing (Scotland) Act 1988. Section 33 of the Housing (Scotland) Act 1988 can be relied upon where the landlord is bringing a short assured tenancy to an end. An application under section 33 is brought under Rule 66. You have selected Rule 65 on the application form. Please clarify the basis upon which eviction is sought and provide an amended application form if it is your intention to proceed under section 33.*

- *Please provide a full copy of the tenancy agreement. The version you have provided appears to be missing the first page(s). The Tribunal will require to see this in order to consider whether the notices have been correctly served.*

- *Please provide evidence of service of the notices upon the tenant, e.g. recorded delivery postal receipt, sheriff officers certificate.*

• *Please provide a copy of the notice under section 11 of the Homelessness etc (Scotland) Act 2003 served on the local authority together with evidence of service, e.g. covering email, postal receipt.”*

5. The Tribunal received no response. On 29 July 2024 the Tribunal emailed the Applicant a copy of the email of 18<sup>th</sup> June and requested a response within 14 days or it would be likely that the application would be rejected. The Applicant was encouraged to seek legal advice before providing his response.
6. On 9 August 2024 the Applicant emailed the Tribunal requesting an update regarding his application. The Tribunal responded on 13 August 2024 with copies of the previous requests for information which had not been addressed.
7. On 9 September 2024 the Applicant emailed the Tribunal again requesting an update regarding his application and asked for previous emails to be resent to him. The Tribunal responded to the Applicant with copies of the previous requests for information.
8. On 11 September 2024 the Tribunal emailed the Applicant again noting that he had failed to respond to the requests for information dated 18<sup>th</sup> June 2024, 30 July 2024 and 13 August 2024. The Tribunal requested a response no later than 18 September 2024, failing which the application would be rejected. There was no further response from the Applicant.
9. 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. The section 11 notice and evidence of service of the section 11 and possession notices are explicit requirements of Rule 109. Accordingly the requirements of lodgement have not been met. Furthermore the Applicant has not adequately specified the legal basis for the application. The Applicant has been asked for this information on numerous occasions but has failed to provide same. He had been made aware of the consequences of not providing the information. 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

**Ruth O'Hare, Legal Member**  
**17 October 2024**