



**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/24/5186

Parties

Mrs Joy O'Hare, Mr Paul O'Hare (Applicant)

Ms Julie Hughes (Respondent)

100 Old Coach Road, East Kilbride, Glasgow, G74 4AT (House)

1. On 9.11.24 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 66 of the Procedure Rules from the Applicant. The application was accompanied by a Tenancy Agreement commencing 29.4.15 with an initial term to 28.10.15, a Notice to Quit document and a S 33 notice both dated 28.8.24 to the date of 29.10.24 with a sending receipt, and the AT5 document.
2. On 12.11.24 the FTT wrote to request further information in the following terms: • No postcode has been provided at part 4 of the application, please provide this • Please confirm the spelling of the first line of your address – on the application at part 2 it states “Weslodge” however other documents show “Westlodge” • a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) •

evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority Please reply to this office with the necessary information by 19 November 2024, otherwise the application may be rejected

3. On 12.11.24 the Applicants replied: "1. The post code in Section 4 should be G74 4AT 2. The Spelling of the house name should be Westlodge 3. Not Applicable 4. Not Applicable" They also attached an amended application showing both Weslodge and Westlodge as the first line of their address.
4. The title deeds show that the property is held in the sole name of Paul O'Hare.
5. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 7. 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

Rules of Procedure:

Application for order for possession upon termination of a short assured tenancy

66. Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—

(a) state—

- (i) the name, address and registration number (if any) of the landlord;
- (ii) the name, address and profession of any representative of the landlord; and
- (iii) the name and address of the tenant;

(b) be accompanied by a copy of—

(i) the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii) the notice by landlord that the tenancy is a short assured tenancy; and

(iii) the notice given to the tenant under section 33(1)(d) of the 1988 Act;

(iv) the notice to quit served by the landlord on the tenant;

(v) a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and

(vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

and

(c) be signed and dated by the landlord or a representative of the landlord.

- 8. Rule 66 (b) (v) requires the Applicant to lodge a copy given to the local authority by the**

landlord under S 11 of the Homelessness (Scotland) Act 2003 if applicable. The exemptions from this obligation are set out in S 11 (1) (a) and (b) of said act, namely if the landlord is the local authority or is required to give such notice to the local authority under any other enactment. From the evidence available neither exemption from the obligation applies and thus a S 11 notice is required in terms of rule 66 (b) (v) of the Rules of Procedure.

9. I consider that the application is not accompanied by a S 11 notice as required in Rule 66 (b) (v) of the Procedural Rules.
10. Furthermore, the application is made by Paul O'Hare and Joy O'Hare. Only Mr Paul O'Hare is the owner of the property and only he is stated as the landlord in the lease. The second Applicant has neither title nor interest to make the application.
11. The address is still incorrectly stated on the application. The correct address is required in terms of rule 66 (a) (i) of the Rules of Procedure.
12. Despite having been asked to provide it, the Applicants have not provided any evidence of when the Notice to Leave and S 33 notice were
13. The lodging requirements for such an application have not been met. For the reasons stated above it would not be appropriate for the Tribunal to accept the application. The application in terms of rule 66 is thus rejected.
14. The Applicants should note that this does not prevent them from making a fresh application once they are able to provide all necessary documents. Should a further application be made, the Applicants should ensure that the notice to the local authority is provided together with evidence when and how this was given to the local authority and the Notice to Quit and S 33 notice should be accompanied by evidence of when and how they were served on the tenant. This application only contained the sending evidence and no receipt.

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

10 December 2024