



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/EV/24/2350

47 Granton Avenue, Airdrie, ML6 8HH ("the Property")

Parties:

**Brian McIntosh ("Applicant")
McGoogans (Coatbridge) Ltd ("Applicant's representative")
Diane Robertson, John Robertson ("Respondent")**

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the Applicant received by it on 23 May 2024 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

Background

- 1 On 22 May 2024 the Applicant submitted an application under Rule 66 of the Rules to the Tribunal. The Applicant sought an eviction order under section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").
- 2 On 23 May 2024 the Tribunal wrote the Applicant's representative to advise that the application was incomplete. The Applicant's representative was asked to provide the following documents:-
 - (i) The tenancy agreement, or as much information about the tenancy as the landlord could give;
 - (ii) The form AT5;
 - (iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act and evidence of service on the tenant;
 - (iv) The notice to quit and evidence of service on the tenant; and
 - (v) The section 11 notice and evidence of service on the local authority.
- 3 On 29 May 2024 the Applicant's representative provided a Form AT6 dated 8 June 2022 and a section 33 notice, also dated 8 June 2022.

- 4 The application was subsequently reviewed by a Legal Member of the Tribunal with delegated powers from the Chamber President. On 19 June 2024 the Tribunal wrote to the Applicant's representative 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. Please submit the following which has previously been requested from you:

- The tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;*
- The notice by landlord that the tenancy is a short assured tenancy ("AT5");*
- Evidence of service of the section 33 notice upon the Respondents;*
- The notice to quit together with evidence of service upon the Respondents;*
- A copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 together with evidence of service upon the local authority;*

2. It is not clear why you have served a Form AT6 in a Rule 66 application. Furthermore, the Form AT6 has expired.

3. The Title Deeds show a joint owner of the property. If that is still the case, please provide their written authorisation to the Applicant making the application in their sole name or provide their full contact details if they are to be a joint applicant

4. Please provide a mandate from the Applicant authorising you to act on their behalf in this application."

- 5 On 4 July 2024 the Applicant's representative emailed the Tribunal with a copy of the tenancy agreement, a blank form AT5 and a blank form AT6. On 10 September 2024 the Tribunal wrote again to the Applicant's representative in the following terms:-

"Thank you for your email of 4 July 2024 which has been reviewed by a Legal Member of the Tribunal.

You appear to have submitted a copy of the tenancy agreement between the parties and a blank Form AT6. You have not therefore provided all of the information we previously requested and at this stage it is likely that your application will have to be rejected.

We will however allow you a final opportunity to submit the following information:-

- Evidence of service of the section 33 notice upon the Respondents;*
- The notice to quit together with evidence of service upon the Respondents;*
- A copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 together with evidence of service upon the local authority;*

- *Written authorisation from the joint owner to the Applicant making the application in their sole name. Alternatively please provide the joint owner's full contact details if they are to be a joint applicant;*
- *A mandate from the Applicant authorising you to act on their behalf in this application.*

If you wish to withdraw the application it would be helpful if you could confirm this in writing.

Please read the above carefully and provide a response no later than 24 September 2024. If you require further guidance regarding your application you may wish to seek advice from a solicitor or advice agency. The Tribunal cannot provide you with legal advice but there are details of advice agencies under the Useful Links section of the Tribunal website."

6 On 9 October 2024 the Applicant's representative emailed the Tribunal, stating that the evidence of service of the section 33 notice upon the Respondents, the notice to quit together with evidence of service, and the mandate from the Applicant had already been sent. They further advised that the notice under section 11 was not applicable.

7 On 6 November 2024 the Tribunal emailed the Applicant's representative in the undernoted terms:-

"We refer to our request for further information of 10 September 2024 and your reply of 9 October 2024. We note you have told us that you have sent the required information or that it is not applicable but please note this is not the case.

Please respond to the following within 14 days using our numbering. Please note that if we do not receive a substantive reply to our various requests within this timescale it is likely the application will be rejected:

- *We asked you for evidence of service of the section 33 notice. Please provide this.*
- *We asked you for the notice to quit and proof of service. Please provide this.*
- *We asked you for the section 11 notice and proof of service. Please provide this.*
- *We asked you for a mandate in your favour. Please provide this.*
- *We asked you to amend the application to include the second owner or alternatively provide their consent to matters proceeding in the applicant's sole name. Please clarify how matters are to proceed.*
- *Please provide a completed AT5 as one provided is blank.*

Please reply to this office with the necessary information by 20 November 2024. If we do not hear from you within this time, the President may decide to reject the application."

8 On 6 November 2024 the Tribunal received an email from the Applicant's representative in the following terms:-

"I am going to send you copies of ABSOLUTELY EVERYTHING once again

Two years this has been going on!

I will send over various e mails as I have huge amount of information"

The Applicant's representative subsequently emailed a blank Notice of Eviction and End of Tenancy under section 33D(3) of the Immigration Act 2014, a Landlord Renewal Schedule from Direct Line Insurance in the name of Elaine Campbell, a revised Form E, a copy of the tenancy agreement and a completed Form AT5.

Reasons for Decision

- 9 The Legal Member considered the application in terms of the Rules and determined that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to provide the further information requested by the Tribunal under Rule 5(3) of the Rules which is necessary to meet the required manner for lodgement.
- 10 The Applicant's representative has been asked for the information on four separate occasions. Whilst they have provided responses to the requests, they have not submitted all of the information requested by the Tribunal. In particular they have not submitted copies of the notice to quit, nor the notice to the local authority under section 11 of the Homelessness etc (Scotland) Act 2003, which are both fundamental statutory documents, and they have failed to provide evidence that the notices have been served upon the relevant parties. The Applicant's representative appears under the misapprehension that a section 11 notice is not required, when in fact it is a specific requirement for an application under Rule 66.
- 11 The Applicant's representative has been encouraged to seek advice if they require guidance with the application. It appears clear from the nature of the correspondence from the Applicant's representative that they are not presently in a position to meet the requirements for an application under Rule 66. Accordingly the Legal Member has concluded that the application cannot be accepted in its current form and must be rejected under Rule 8(1)(c).
- 12 Both the Applicant and the Applicant's representative are encouraged to seek advice regarding any future applications to the Tribunal, to ensure that they are in a position to comply with the requirements for lodgement.

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: A party 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
2 December 2024