

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/3718

2 Addiewell Place, Coatbridge, ML5 4DS ("the Property")

Parties:

**Ann Hughes ("Applicant")
Shannon Campbell ("Respondent")**

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the Applicant received by it on 14 August 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 14 August 2024 the Applicant submitted an application under Rule 66 of the Rules. The Applicant sought an eviction order under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided a copy of a tenancy agreement dated 13 December 2016 and a notice to leave under section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").
- 2 On 15 August 2024 the Tribunal wrote to the Applicant by email to advise that the application was incomplete. In particular the Tribunal requested evidence that the notice had been given to the tenant, evidence to support the eviction grounds, and a copy of the notice given to the local authority under section 11 of the Homelessness etc (Scotland) Act 2003 together with proof of service.
- 3 The Tribunal received no response from the Applicant. The application was subsequently reviewed by a Legal Member of the Tribunal with delegated powers from the Chamber President. On 23 September 2024 the Tribunal wrote to the Applicant again by email 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. If you are applying under rule 66 you must provide the AT5 document, the Notice to Quit with proof of service, the notice under S 11 of the Homelessness Etc (Scotland) Act 2003 given to the local authority and evidence of how and when this was given, the notice under S 33 of the Housing (Scotland) Act 1988 with proof of service and the tenancy agreement. Please note that wishing to sell a property is not a ground for eviction under the Housing (Scotland) Act 1988.

2. Please note that the application is made under rule 66, which relates to tenancies under the Housing (Scotland) Act 1988 but you have provided a Notice to Leave document, which only can be used for tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The 2016 Act only applies to tenancies which started after 1.12.2017 and thus would not apply to a tenancy from 2016. You will have to provide a valid Notice to Quit as required in terms of rule 66 and provide evidence when and how you served this on the tenant. Similarly, you would have to provide the S 33 notice and proof of service. If you have not done so, please consider withdrawing the application and raising a fresh application once you have all the necessary documents.

You may wish to seek legal advice on the matter. The website of the Housing and Property Chamber provides links to some free advice bodies under the “useful links” tab. Unless you provide the required documents, the application will have to be rejected and the decision published in the decision register. If you wish to withdraw the application, please do so in writing.

Please reply to this office with the necessary information by 7 October 2024. If we do not hear from you within this time, the President may decide to reject the application.”

4 On 18 October 2024 the Tribunal received an email from the Applicant with another copy of the notice to leave under section 50(1)(a) of the 2016 Act. The Applicant did not address any of the points raised by the Tribunal in its email of 23 September 2024.

5 On 12 November 2024 the Tribunal wrote again to the Applicant by email in the following terms:-

“Thank you for your recent communication with the Tribunal. Unfortunately you have not addressed the issues raised by the Tribunal which are set out below.

If you are applying under rule 66 you must provide the AT5 document, the Notice to Quit with proof of service, the notice under S 11 of the Homelessness Etc (Scotland) Act 2003 given to the local authority and evidence of how and when this was given, the notice under S 33 of the Housing (Scotland) Act 1988 with proof of service and the tenancy agreement.

Please note that wishing to sell a property is not a ground for eviction under the Housing (Scotland) Act 1988. Please note that the application is made under rule 66, which relates to tenancies under the Housing (Scotland) Act 1988 but you have provided a Notice to Leave document, which only can be used for tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The 2016 Act only applies to tenancies which started after 1.12.2017 and thus would not apply to a tenancy from 2016.

You will have to provide a valid Notice to Quit as required in terms of rule 66 and provide evidence when and how you served this on the tenant. Similarly, you would have to provide the S 33 notice and proof of service. If you have not done so, please consider withdrawing the application and raising a fresh application once you have all the necessary documents. You may wish to seek legal advice on the matter. The website of the Housing and Property Chamber provides links to some free advice bodies under the “useful links” tab.

If you intend to withdraw the application please confirm this in writing to the Tribunal. You may wish to take legal advice on your position. Please confirm your position within 14 days. If you do not provide the documents mentioned this application will require to be rejected.”

- 6 The Tribunal received no further response from the Applicant.

Reasons for Decision

- 7 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. The Applicant has been asked for the information on three separate occasions. The Applicant has been advised of the potential defects with the application and has failed to satisfy the Tribunal that these can be remedied. Based on her response dated 18 October 2024 it can be reasonably assumed that she is unable to do so. 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).
- 8 The Applicant is strongly encouraged to seek advice from a solicitor or advice agency prior to submitting any further applications to the Tribunal to ensure that any application is compliant with the statutory requirements for termination of an assured or short assured tenancy.

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
30 December 2024