

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/24/4317

10 Exeter Street, Coatbridge, ML5 4AH ("the Property")

Parties:

James Patrick ("Applicant")

Mary Allan ("Applicant's representative")

Hugh Miller ("Respondent")

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the Applicant received by it on 16 September 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 16 September 2024 the Applicant submitted an application under Rule 65 of the Rules seeking an eviction order under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). In support of the application the Applicant provided a notice to leave, a form AT6 and a copy of a short assured tenancy agreement between the parties dated 4 October 2017.
- 2 Following a request for information from the Tribunal the Applicant's representative provided a copy of a notice under section 11 of the Homelessness etc (Scotland) Act 2003, another copy of the notice to leave and an undated letter from the Respondent confirming receipt of the notice to quit, form AT6 and "all other relevant paperwork".
- 3 The application was reviewed by a Legal Member of the Tribunal with delegated powers from the Chamber President. On 24 October 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 stated the following:

- You have served a Notice to Leave upon the Respondent, but that is only appropriate for private residential tenancies, which is not the case here. This is an assured tenancy.*
- A Rule 65 application usually requires a Notice to Quit served to an ish date of the tenancy. A Rule 65 application also requires a Form AT6. Although you have served a Form AT6, you have inserted a ground of possession that is not applicable for an assured tenancy – it seems you have copied the ground from the Notice to Leave, and that ground is only applicable to a private residential tenancy. There is no ground of possession in respect of selling the property with an assured tenancy. Furthermore, you have not given the correct period of notice as required for a Form AT6. It would appear, therefore, that the Form AT6 is invalid.*
- In these circumstances, you would be advised to consider withdrawing the application. You would also be advised to take suitable advice from a housing agency or solicitor before serving further notices to ensure that the correct notices are served and completed correctly.*

You should also be aware of the following:

- You must lodge evidence of service of any notices when making an application. The information from the Respondent is not sufficient. If notices are served by hand, we would expect a statement showing by whom, to whom, when and where service was effected. If notices are served by email (if that is an agreed method between the parties), we would expect to see a copy of the email, and if served by recorded delivery, we would expect to see a copy of the posting receipt and tracking report.*
- We would require a mandate from the Applicant authorising you to act as their representative in any application.*
- The legislation ticked on the section 11 form is incorrect.*

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

4 No response was received from the Applicant’s representative.

Reasons for Decision

5 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. It is clear that there are potential defects with the application and the Applicant had failed to satisfy the Tribunal that these can be remedied. 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).

- 6 The Applicant is strongly encouraged to seek advice from a solicitor or independent advice agency prior to submitting any further applications to the Tribunal to ensure that they are compliant with the statutory requirements regarding service of notices.

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
13 December 2024