

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/24/3430

127B Methven Court, Links Street, Kirkcaldy, KY1 1QL ("the Property")

Parties:

Andrea Reid ("Applicant")

Marcin Kazmierkiewicz ("Respondent")

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the Applicant received by it on 28 July 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 28 July 2024 the Applicant submitted an application to the Tribunal under Rule 65 of the Rules and section 18 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided a copy letter she had sent to the Respondent.
- 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 a copy of the tenancy agreement, a Form AT6 and notice to quit together with proof of service, evidence to show that the possession ground had been met, and a copy of the notice under section 11 of the Homelessness etc (Scotland) Act 2003 together with proof of service.
- 3 On 27 August 2024 the Tribunal wrote again to the Applicant following a review of the application by a Legal Member of the Tribunal. The Tribunal noted that the application had been made under Rule 65 however the application form referred to rule 109 and ground 1 as the possession ground. The Applicant was advised that ground 1 did not apply to assured tenancies. The Applicant was asked to provide an amended application that specified the correct ground together with a copy of the tenancy agreement, a copy of the notice to quit and Form AT6 with

proof of delivery on the Respondent, a copy of the section 11 notice together with proof that this had been sent to the local authority, and evidence to support the possession ground. The Tribunal suggested the Applicant may wish to take legal advice before providing a response.

- 4 On 8 September 2024 the Applicant emailed the Tribunal with a copy of a short assured tenancy agreement dated 18 July 2013, a notice to leave, an amended Form E application form, a section 11 notice, a home report for the property and excerpt messages between the Applicant and the Respondent.
- 5 On 21 October 2024 the Tribunal wrote again to the Respondent. The Tribunal noted that the Applicant had provided a copy short assured tenancy agreement and a notice to leave. The Applicant was advised that a notice to leave could not be used to terminate an assured tenancy as it applied to private residential tenancies which came into force after 1 December 2017. It was noted that the tenancy between the parties commenced in 2013. The Applicant was asked to confirm if she wished to withdraw the application, or if she could provide a copy of a notice to quit and Form AT6 that had been sent to the Respondent. The Applicant was strongly encouraged to seek legal advice regarding the application.
- 6 On 21 October 2024 the Tribunal received a response from the Applicant. The Applicant advised that she had sent in the Form AT6 with her original application as well as a personal letter to the Respondent. She had completed every form and sent the Respondent everything she felt she needed to.
- 7 On 21 November 2024 the Tribunal wrote again to the Applicant. The Applicant was advised again that the tenancy was a short assured tenancy and that formal notices required to be served in order to terminate same. The Applicant had only provided a notice to leave which did not apply to short assured tenancies. The Tribunal confirmed that no Form AT6 had been lodged. The Applicant was again asked to provide the correct statutory notices. The Applicant was also asked to clarify the remaining tenants in the property and provide proof of delivery of the section 11 notice. The Tribunal explained that the paperwork lodged to date indicated that the correct notices had not been served and the application was therefore invalid. The Applicant was advised to withdraw her application or provide the correct notices. She was told that if she failed to do either her application would be rejected. The Tribunal strongly recommended the Applicant take legal advice.
- 8 On 11 December 2024 the Applicant emailed the Tribunal. She advised that she was struggling to look into the matter in more depth due to other commitments. She could not afford a solicitor. She had given the Respondent every type of form and had provided a letter as well. The Respondent was happy to move out. She felt that what she had provided was enough.

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. 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 11 December 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).

- 10 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

Ruth O'Hare, Legal Member
31 January 2025