



**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/24/4491

Parties

Mrs Helen Fleming (Applicant)

Bell Ingram LLP (Applicant's Representative)

18D East High Street, Forfar, DD8 2EG (House)

1. On 26.9.24 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an order for possession under Rule 65 of the Procedural Rules and s 18 of the Housing (Scotland) Act 1988. It mentioned as the ground for the application that the landlord is looking to sell the property. An AT6 form dated 9.4.24 stating as the date proceedings will be raised as 30.9.24 and stating as the ground in part 3 of the form: "The landlord intends to sell the property" was provided and eventually the applicant's representative also provided evidence that this was sent recorded delivery and received on 11.4.24.

2. On 5.11.24 the FTT wrote to the applicant as follows: In relation to case reference FTS/HPC/EV/24/4491 we note that the form AT6 makes no reference to any of the grounds of eviction listed in schedule 5 of the Act. Please confirm that you only wish to proceed with the application on the basis of rule 66.
3. On the same day the applicant's representative replied: On the AT6 it states that the Landlord is looking to sell the property. If you require anything further then please do not hesitate to contact this office.
4. On 11.12.24 the FTT again wrote in the following terms: The Form AT6 is not valid as it does not specify a valid ground of possession in terms of the Housing (Scotland) Act 1988. Furthermore, it is unsigned and undated, and you have not provided any evidence of service of the Form AT6 upon the Respondent. Please confirm that you are withdrawing the application.
5. No reply was received in relation to the case. The FTT then again wrote on 23.1.25 as follows: "With regard to application EV.24.4491 which has been made under rule 66, the form AT6 is invalid as it does not specify a valid ground for possession. It is also unsigned and undated and there is no evidence of service on the respondent. Please confirm that this application can now be withdrawn."
6. On 31.1.25 the representative replied: Further to the email below please find attached signed mandate, signed AT6 and proof of posting. Hopefully this is all you require.
7. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

8. 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."

9. 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

The Application is made in terms of Rule 65 of the Rules of Procedure. This relates to orders for possession in relation to assured tenancies under S 18 (1) of the Housing (Scotland) Act 1988.

Rule 65 states: Where a landlord makes an application under section 18(1) (orders for possession) 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;

(iii) the name and address of the tenant; and

(iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b) be accompanied by—

- (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
- (ii) a copy of the **[F40]** notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;
- (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and
- (iv) evidence as the applicant has that the possession ground or grounds has been met; **F41...**
- [F42(v)]** a copy of the notice given to the local authority by the landlord 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]
- (c) be signed and dated by the landlord or a representative of the landlord.

10. It requires for the application to be accompanied by an AT6 notice stating a ground included in Schedule 5 of the Housing (Scotland) Act 1988 and evidence as the applicant has that the possession ground or grounds has been met. S 18 (1) of the Housing (Scotland) Act 1988 states "The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act." It is thus clear that the evidence to be provided to show that a ground applies has to relate to one of the grounds stated in Schedule 5 and that only such a ground can be used for an AT6 notice.
11. The FTT had pointed out repeatedly that in order for a valid application under rule 65 to be made a valid ground for such an application has to be state on the AT6 document. The ground stated in the AT6 document is that the landlord intends to sell the property. This is not one of the grounds included and listed in Schedule 5 of the Housing (Scotland) Act 1988 and thus is not a ground that can be used for an application under rule 65 and sections 18 and 19 of the Housing (Scotland) Act 1988.

The applicant had been offered the opportunity to amend or withdraw the application. No evidence has been provided that a ground stated in Schedule 5 of the Housing (Scotland) Act 1988 has been met. Thus the requirements in rule 65 (a) (iv) and (b) (iv) are not met.
12. For the reasons stated above it would not be appropriate for the Tribunal to accept the application because the application does not fulfill the lodging requirements of a valid application under rule 65.

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 McFatridge

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Legal Member

4 March 2025