



**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/24/3991

Parties

Mrs Margaret Ritchie (Applicant)

11 Ardgour Place, Motherwell, ML1 4HL (House)

1. On 28.8.24 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 ground 10, that the tenancy had expired and the tenant was served with a notice and had failed to leave. The application was only accompanied by the following documents:

An AT6 form dated 4.4.24 to the date of 29.6.24 stating the tenancy had ended, a Notice to Quit dated 4.4.24 to the date of 29.6.24 and a S 33 notice dated 4.4.24 to the date of 29.6.24.

2. On 29.8.24 the FTT wrote to the applicant requesting further documents, in particular the tenancy agreement, evidence of service of the notices and a S 11 notice and evidence of service. No reply was received.
3. On 16.10.24 the FTT wrote to the applicant in the following terms: "A Legal Member of the Tribunal has reviewed your application. Before a decision can be made on whether your application can proceed to the next stage we require you to provide us with the following information:-
 - You have selected Rule 65 on the Form E, which applies to applications for possession of an assured or short assured tenancy on mandatory/discretionary grounds. You have however produced a notice to quit and section 33 notice, together with a Form AT6. It appears that you are in fact proceeding under Rule 66, possession on termination of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988. Can you please clarify which rule you wish to rely upon in this application.
 - You have stated that you are relying upon ground 10. Ground 10 relates to an application under rule 65 and applies where a tenant, as opposed to a landlord, has given notice to quit and has not left the property. As noted above, it appears that you may be relying upon section 33 of the Housing (Scotland) Act 1988. Can you please clarify the ground for possession, and provide an amended Form E with the correct information included in section 5.
 - Please provide a copy of the tenancy agreement.
 - Please provide evidence that the notices were sent to the tenant, e.g. recorded delivery receipt and tracking information or sheriff officers certificate.
 - Please provide a copy of the section 11 notice that you require to send to the local authority, and proof that it was sent. If you are unsure about what a section 11 notice is you may be able to seek guidance from your local council.
 - The property is owned by Martin Ritchie and Margaret Wardrop. Mr Ritchie also appears to be the registered landlord for the property. Can you please confirm if Mr Ritchie is to be added as a joint applicant, and provide an amended Form E application form with his details. Alternatively please provide a letter from Mr Ritchie consenting to the application proceeding in your sole name."
4. No reply was received.
5. On 16.12.24 the FTT wrote to the applicant in the following terms: It is noted that you have not responded to our enclosed request for further information which was sent to the email address provided by you. Please confirm if this is the correct email address. Please provide the requested information within fourteen days, or it is likely the application will be rejected. If you no longer intend to progress the application, it would be very helpful if you would confirm that you wish to withdraw the application. Otherwise, it is likely that a rejection decision naming the parties will be published on our website.
6. On 19.12.24 the applicant replied and stated the application was to be made in the name of the joint owners, there was no tenancy agreement as this had been lost, a S 11 notice

had been sent and “We wish to proceed with eviction under rule 65 of form E”.

7. On 22.1.25 the FTT again requested the necessary documents and information.
8. On 27.1.25 the applicant provided the S 11 letter to the Council, further copies of the notices previously sent and narrated that these had been sent recorded delivery but had not been signed for. The applicant then went on to say that the notices in hardcopy were handed to the respondent on 13.6.24 when the respondent attended the offices of Love Letts. The applicant stated that on 26.6.24 the respondent’s niece had requested an extension of the notice period and this was extended to 16.7.24. The response email is referred to for its terms.
9. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

10. 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."

11. 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 now 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.

12. It requires for the application to be accompanied by an AT6 notice, the tenancy agreement, a S 11 notice and a Notice to Quit and requires that the applicant provides evidence as the applicant has that the possession ground or grounds has been met.

13. The application was not accompanied by a valid Notice to Quit which meets the requirements for a notice to quit terminating the contractual relationship between parties of a tenancy under the Housing (Scotland) Act 1988. The Applicants provided a Notice to Quit to the date of 29.6.24. The applicant advised in the S 33 notice that the tenancy started on 1.7.13. The applicant did not advise if there were any further arrangements about continuation month to month in the tenancy agreement but the AT6 document did mention a continuation month to month. Even taking all information in the applicant's favour, the 29th day of the month would not be an ish date for a tenancy that continued from 1.7. of a year month to month unless the date was 29 February in a leap year as the 29th day of any other month would be asking the tenant to leave early without giving an explanation why this would be the case. The tenancy was not validly terminated by a Notice to Quit to a date that did not form a valid ish date. Thus the requirement of rule 65 (b) (iii) is not met.

14. The applicant confirmed in the reply of 19.12.24 that the application was to be made under rule 65 although the FTT had pointed out that the ground used, ground 10, would not apply in this case. The ground stated in the AT6 document again referred to the tenancy having ended. Ground 10 of the Housing (Scotland) Act 1988 states:

The following conditions are fulfilled—

(a)the tenant has given a notice to quit which has expired; and

(b)the tenant has remained in possession of the whole or any part of the house; and

(c)proceedings for the recovery of possession have been begun not more than six months after the expiry of the notice to quit; and

(d)the tenant is not entitled to possession of the house by virtue of a new tenancy.

It is clear from the documents lodged that the tenant did NOT at any point issue a notice to the landlord that the tenant wished to terminate the lease. This means that no evidence has been provided showing that a ground under schedule 5 of the Housing (Scotland) Act 1988 applies in this case. The only other reference in the documentation to a reason for the application is that the applicant wishes to sell the property. That is not a ground stated in schedule 5 of the Housing (Scotland) Act 1988. The applicant had been offered the opportunity to amend the application but confirmed they wishes to proceed with the application under rule 65. Thus the requirement in rule 65 (b) (iv) is not met. No evidence has been provided that the ground stated as the basis for the application has been met.

15. 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.

16. This decision does not prevent the applicant to make a further application once all requirements for an application to the FTT can be met.

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