



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/24/4315

Parties

Ms Kerry Clark (Applicant)

W & AS Bruce (Applicant's Representative)

28 Logie Place, Dunfermline, KY12 9BT (House)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 65 on 12 September 2024.
2. The application was considered by the Tribunal and further information was requested by letters of 10 January and reminder of 15 March 2025 to:

“Your application appears to seek an eviction order on the basis that the tenancy is an assured or short assured tenancy and is made under rule 65 of First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. That rule deals with evictions where a landlord is using one or more of the statutory grounds for eviction contained in schedule 5 of the Housing (Scotland) Act 1988 and using the process set out in sections 18 and 19 of that Act. If you wish to proceed on this basis, then no notice to quit requires to be served if the tenancy agreement properly narrates that eviction may be sought on one or more of the specified grounds. The copy tenancy agreement provided does not appear to contain any such terms . Your attention is drawn to section 18(6) of the 1988 Act The Form AT6 appears to specify four separate grounds for eviction as contained in schedule 5 of the Housing (Scotland) Act 1988. Section 19(2) of that Act indicates that The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice. Does your Form AT6 comply with these requirements? If you also wish to raise an application on the basis that this tenancy is a short assured tenancy and you wish to proceed using the procedure under section 33 of the 1988 Act then you require a lodge a separate application under rule 66 of the procedure rules and you will require to serve a notice to quit. Please consider the terms of section 33(1) (b) of the 1988 Act which indicates this procedure can only be used when tacit relocation is not operating. That requires service of a notice to quit. Please confirm how you wish to proceed in this matter You seem to indicate that you wish to seek eviction based on grounds 11 and 12 which relate to rent arrears . Please provide evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. What steps have been taken in conjunction with the tenant to manage arrears prior to commencing proceedings for repossession on the grounds of rent arrears If you are pursuing eviction based on grounds 13 and 14, please provide further specification of the alleged breaches of the tenancy agreement and the alleged damage/deterioration caused to the property by the tenant.”

3. The information was not received. The Applicant was informed that if the information was not provided by 29 March 2025 the application may be rejected.

Reasons for Decision

4. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;·
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

5. Rule 65 provides for certain information to be supplied with an application:

Application for order for possession in relation to assured tenancies

65. 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 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; ...

(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.

The applicant failed to produce evidence to support the application that had been requested. The application could not proceed.

6. The Tribunal consider that there is good reason why the application should not be accepted due to the Applicant's failure to provide required information and to co-operate with the Tribunal. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Alan Strain

30 April 2025

Legal Member/Chair

Date