



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

Ref: FTS/HPC/EV/21/0721

Re: 32 McGowan Road, Falkirk, FK2 9FJ ("the Property")

**Walker Residential Properties Ltd, Alderstone House, MacMillan Road, Livingston,
EH54 7AW ("the Applicant")**

**Walker Residential Properties Ltd, Alderstone House, MacMillan Road, Livingston,
EH54 7AW ("the Applicant's Representative")**

Mr Stephen Grant 32 McGowan Road, Falkirk, FK2 9FJ ("the Respondent")

DECISION

**It was determined by the Legal Member acting under the delegated powers of the
Chamber President, in terms of 8 of the 2017 Rules that there was a good reason
to believe that it would not be appropriate to accept the Application within
the meaning of Rule 8(1)(c) of the Procedural Rules, therefore the Application must be
rejected in terms of Rule 8(1).**

REASONS

- 1. An application dated 17 March 2021, was received from the Applicant's
Representative ("the Application"). The Application was made under Rule 65 of the 2017
Rules, being an application for an order for possession in relation to an assured tenancy.
The Applicant's Representative attached a number of documents.**

2. An application made in terms of Rule 65 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; and*
- iii. *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);*
- vi. *...*

c. *Be signed and dated by the landlord or a representative of the landlord.*

3. On 1 April 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant's Representative, as follows:

"I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following:

- Please provide a copy of the Notice to Quit and AT6 Notice, together with evidence showing how and when these were served on the Respondent.*
- Please provide a copy of the Section 11 Notice sent to the Local authority, together with evidence showing how and when it was sent, if available.*
- Please confirm whether you have complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Please find attached Scottish Government Guidance in relation to same. Please note that compliance with these regulations will be taken into account by the Tribunal when assessing whether it is reasonable to grant an eviction order*

Please reply to this office with the necessary information by 15 April 2021. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.”

4. The Applicant’s Representative responded to the request for further information and provided some of the requested information. However, other required information was not provided, in particular the AT6 form and proof of service and the Section 11 notice sent to the local authority.
5. On 20 April 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant’s Representative, as follows:

I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following:

Please produce copy of the AT6 and proof of service. This was requested in the Tribunal’s last request to you but was not produced.

The Tribunal note that you have not served a section 11 Notice. The application has been brought under Rule 65 of the Tribunal’s Procedure Rules which provides at 65(b)(v) that an application under Rule 65 MUST be accompanied by a copy of the section 11 Homelessness Notice served upon the local authority. Please provide a copy of the section 11 Notice and proof of service on the local authority.

Please reply to this office with the necessary information by 4 May 2021. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.”

6. The Applicant’s Representative failed to respond to the request for further information.
7. On 18 May 2021, a further request for the said information was sent to the Applicant’s Representative, in the following terms:

I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following:

Your application has been referred to a legal member. The legal member request further information as follows:

Please provide the information requested in the Tribunal’s letter to you of 20 April 2021.

Please provide the information requested within 14 days failing which your application may be refused.

Please reply to this office with the necessary information by 1 June 2021. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.

8. The Applicant's Representative failed to respond to the request for further information.
9. On 16 June 2021, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 65 of the 2017 Rules.
10. Rule 8 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 the repeated further information requests, it was determined that the requirements for making an application under Rule 65 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 65. The Applicant's Representative has only partially responded to the tribunal's first information request and failed to respond to the following two further information requests. The Applicant's Representative has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a good reason to believe that it would not be appropriate to accept the Application within the meaning of Rule 8(1)(c) of the

Procedural Rules; therefore the Application must be rejected in terms of Rule 8(1).

12. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

16 June 2021