



**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/23/1352

Parties

Mrs Kristene Spalding, Ms Jan McCorkindale (Applicant)

Laura Hannah (Respondent)

Newman Properties (Applicant's Representative)

92 Pennelton Place, Bo'Ness, EH51 0PE (House)

1. On 26.4.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 65 of the Procedure Rules and S 18 of Housing (Scotland) Act 1988 (the Act) and stated as the grounds applicable grounds 6, 10, 12 and 13 of schedule 5 of the Act.
2. The application was accompanied by a Notice to Quit document dated 7.10.22 asking

the Respondent to quit the premises by 7.12.22, a S 33 notice, an AT5 document and a minute of agreement showing as the start date of the tenancy 18.2.2011. No S 11 notice, no AT6 document and no evidence for any of the grounds cited in the application were lodged, neither was a mandate authorising the agent.

3. In letters dated 27.4.23 and 14.6.23 the FTT requested further information from the Applicant, in particular clarification which rule should be used, production of the S 11 notice including the required information and evidence of this having been given to the local authority, evidence of the grounds being met and representations as to the validity of the Notice to Quit. The date for a reply stated in the last letter of the FTT was 28.6.23. On 2.5.23 the Applicant's agent had asked for an extension of the reply time, which the first FTT letter had stated as 4.5.23. The FTT wrote on 9.5.23 to confirm the new date for a reply as 15.5.23. Since then no further information has been received from the Applicant's agent. No reply has been received to the last request for further information, which stated as the reply date 28.6.23.
4. The documents lodged by the applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

- 6. 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

1. The lodging requirements for an application under rule 65 include the requirement to lodge 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 in (b) (ii), a copy of the notice to quit in (b) (iii), evidence as the applicant has that the possession ground or grounds has been met in (b)(iv) and a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003 in (b) (v).
2. No AT6 notice was produced despite this having been raised in repeatedly in the FTT letters sent.
3. The minute of agreement constituting the tenancy agreement stated as the start date for the tenancy 18.1.11 and a duration of 2 years. There was not further provision included regarding a termination date. Thus the 18th day of a January of any year would be deemed to be an ish date of the tenancy under tacit relocation. The Notice to Quit gave as the end date of the tenancy the date of 7.12.22, which is clearly not an ish date. Despite having been advised by the FTT that the Notice to Quit appears to be invalid as it had not been issued to an ish date, no representations were made and no valid Notice to Quit provided. The reference to a lodging requirement of a Notice to Quit in rule 65 (b) (iii) is interpreted as a reference to a valid Notice to Quit. No valid Notice to Quit has been lodged.

4. Despite having been advised by the FTT that no evidence for any of the grounds stated has been provided this has still not been produced.
5. Despite repeated requests the S 11 notice necessary in terms of rule 65 (b) iv) and section 19A of the Act has not been lodged.
6. Because several document necessary to lodge an application in terms of rule 65 as stated above were not provided, it would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements.
7. The application is thus rejected.

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.

P Hennig-McFatrige



Petra Hennig McFatrige
Legal Member
20 July 2023