

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules
of Procedure 2017 ("the Procedural Rules")

Case Reference: FTS/HPC/EV/19/2365

Miss Elizabeth Addison ("the applicant")

Mr Lee Brodie ("the respondent")

1. On 18th July 2019, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for order for possession in relation to assured tenancies.
2. By letter dated 12/08/19, the Tribunal requested further information from the applicant. In particular, the Tribunal requested the applicant to respond by 26th August 2019 to confirm a forwarding address for the Respondent, and to provide copies of any notices served such as a notice to quit, statutory notice in terms of the Housing (Scotland) Act 1988 advising the tenant of the applicant's intention to repossess the property and notice to the local authority under the Homelessness etc (Scotland) Act 2003. All of the items requested are mandatory requirements for lodgement in terms of Rule 65. The applicant has failed to respond to this request.
3. Thereafter, by letter dated 10/09/19, the Tribunal again wrote to the applicant

asking her to provide copies of a notice to quit compliant with the requirements of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988; a notice of intention to raise proceedings for possession under section 19 of the Housing (Scotland) Act 1988 (in form AT6); and/or notice of requirement of possession under section 33 of the Housing (Scotland) Act 1988. The Tribunal asked the applicant to respond by 24 September 2019, and indicated that the President may decide to reject the application if she did not do so. The applicant again failed to provide the requested information.

DECISION

4. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

"Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate."

5. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should not be accepted on the basis that the outstanding information requested has not been received within a reasonable period from the date of request within the meaning of Rule 5(4) of the Procedural

Rules.

REASONS FOR DECISION

6. In determining whether an application has been lodged in the required manner, the Tribunal must assess whether all mandatory requirements for lodgement have been met in terms of Rule 5(2). The application has not been lodged in the prescribed manner set out in Rule 65 in respect that no current address of the Respondent has been provided, and the application has not been accompanied by a copy notice to quit, copy notice of intention to raise proceedings, or copy notice given to the local authority under the Homelessness etc (Scotland) Act 2003. The Tribunal has requested this further information from the applicant in terms of Rule 5(3).
7. The applicant has failed to respond to the Tribunal's request for further information, and accordingly the application should not be accepted on the basis that the outstanding information requested has not been received within a reasonable period from the date of request within the meaning of Rule 5(4) of the Procedural Rules.

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.

Neil Kinnear
Legal Member
09/10/19