



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

12 Airdrie Hill Street, Airdrie ("the Property")

Case Reference: FTS/HPC/EV/21/2046

Bill McLaren, 31 Blairhill Street, Coatbridge ("the Applicant")

Lyndsay Cushnan, 12 Airdrie Hill Street, Airdrie ("the Respondent")

1. The Applicant lodged an application with the Tribunal on 24 August 2021, seeking an order for possession of the property in terms of Rule 65 and Section 18 of the Housing (Scotland) Act 1988. The application form refers to grounds 1, 11 and 12. A notice to quit, section 33 notice and AT6 were lodged with the application. The AT6 appears to have given the Respondent three months notice of the application and refers to ground 1 – family member of the landlord intends to reside in the let property. The Applicant's representative indicated that the tenancy agreement could not be provided but that the tenancy started in 2015.
2. The Tribunal issued a request for further information on 7 September 2021. The Applicant was directed to provide further documents and information, including information about the validity of the notice to quit, since no information or evidence had been provided as to term of the tenancy, and a copy of the section 11 notice sent to the Local Authority. No response was received. A

reminder was issued on 18 October 2021. A partial response was provided. The Applicant submitted a further copy of a letter to the Local Authority, but not a section 11 notice in the prescribed format. The Applicant requested a further 30 days to provide the remainder of the information and documents. This was granted on 15 November 2021 but the Applicant then failed to send a further response or reply to a reminder issued on 29 December 2021. On 31 January 2022, the Tribunal issued a further letter to the Applicant, directing him to provide a response to the outstanding matters and to address the issue of the tenancy term and its date. He was asked if he was in a position to give oral or other evidence on the matter. The Applicant was also directed to provide evidence in support of grounds 11 and 12 and to clarify the validity of the AT6 notice as this does not mention grounds 11 and 12 and specifies a ground that is not contained within schedule 5 to the 1988 Act. The Applicant was advised that it was likely that the application would be rejected if he failed to respond. No response has been received.

Decision

3. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

4. The Applicant submitted an application for an order for possession in terms of Rule 65 of the Rules. The Tribunal directed the Applicant to provide additional information and documentation. In particular, the Applicant was directed to clarify the validity of the Notice to Quit and AT6 notice submitted with the application, clarify the grounds for possession, provide a copy of the section 11 notice in the prescribed format and submit evidence in support of the grounds for possession. The Applicant has failed to respond to several requests for the

information and documents to be provided.

5. Rule 5 of the Procedure Rules states that 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.....65 to 70..., as appropriate”. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”. Rule 65 requires an Applicant to specify the “possession grounds which apply as set out in Schedule 5 of the 1988 Act”, to provide a copy of the tenancy agreement or “ as much information about the tenancy as the landlord can give”, and to lodge a Notice to Quit, AT6 Notice, section 11 notice and evidence showing that the possession ground has been met. . The Applicant has failed to lodge required documents and information with the application and has failed to provide information and documents in response to requests from the Tribunal in terms of Rule 5(3).
6. As the Applicant has failed to comply with Rules 5 and 65 of the Procedure Rules, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.

Josephine Bonnar, Legal Member
28 February 2022

