



**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/22/4304

Parties

Mr Simon Coppinger (Applicant)

Miss Kayleigh Fraser (Respondent)

Guardian Letting (Applicant's Representative)

1/1, 27 Pine Crescent, Johnstone, PA5 0BX (House)

1. On 30.11.22 the First-tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an order for possession under Rule 65 of the Procedural Rules and s 18 of the Housing (Scotland) Act 1988, which was dated 29.11.22. The application was accompanied by a tenancy agreement for the property commencing

15.8.11 with an initial period to 16.2.12, a Notice to Leave document dated 26.8.22 which did not state the date by which the tenant had to leave, a S 33 document and an AT6 notice dated 26.8.22 and a sheriff officer's certificate of service dated 26.8.22 but stating the date when the documents were served as 26.10.22. The application stated as the ground on which the application was based ground 12A.

2. On 7.12.22 the FTT requested a S 11 notice and proof of service. On 21.12.22 the FTT wrote to the Applicant. The letter stated: "1. The application is affected by the Cost of Living Act. Please see the attached information. 2. Please clarify the eviction ground. You have specified 12A in the Form E. However, there is no ground 12A in the 1988 Act. The rent arrears grounds are 8, 8A, 11 and 12. 3. As previously requested, please provide a copy of the section 11 notice with evidence that it was sent to the Local Authority. 4. Please obtain a replacement certificate of service from the Sheriff Officer as the document lodged gives 2 different service dates. 5. The Notice to quit appears to be invalid as it does not specify the date on which the contractual tenancy will end. Please explain the basis upon which the application can proceed. 6. The AT6 notice is incomplete and also appears to be invalid. Please provide a complete, valid AT6 notice which has been served on the Respondent. 7. Please provide a rent statement which shows the rent due, the payments made and the running total outstanding. 8. If the Applicant has complied with the Rent Arrears Pre Action Requirements Regulations, please provide evidence of this. You may wish to take legal advice before you respond "
3. On 22.12.22 the Applicant provided a S 11 notice which referred to proceedings under the Rent (Scotland) Act 1984 and a proof of delivery by email to the local authority on 19.12.22. No other documents were included.
4. The FTT wrote further letters requesting the information requested on 21.12.22 on 9.1.22 and 15.2.23. No further reply was received.
5. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

7. 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

8. The Application is made in terms of Rule 65 of the Rules of Procedure. This relates to orders for possession in relation to assured tenancies under S 18 (1) of the Housing (Scotland) Act 1988.
9. The tenancy the Applicant submitted is an assured tenancy as it meets the requirements of S 1 of the Housing (Scotland) Act 1988. An assured tenancy would have to be terminated by a valid Notice to Quit. One essential element in a Notice to Quit is that the tenant has to know at which date the landlord is seeking to terminate the contractual relationship. The Notice to Quit provided does not give a date. It is thus not a valid Notice to Quit and thus does not fulfill the requirements of rule 65.
10. A further lodging requirement in rule 65 is the provision of an AT6 document. The AT6

document lodged consists only of page 1 and the page on which part 4 is found. The other pages are missing. The Applicant has not provided the pages containing the ground on which the AT6 notice is based and in part 4 the Applicant does not state when proceedings can first be raised. I thus find that this is not a valid AT6 document as the essential information about the notice ground and period given was not stated. In terms of S 19 (2) of the Housing (Scotland) Act 1988 the Tribunal can entertain an application lodged without a S 19 notice if it considers that it would be reasonable to dispense with the requirement for such a notice. However, as no representations were made as to why the notice was incomplete despite 3 letters asking the Applicant to provide a valid notice the Tribunal sees no reason why this should be considered reasonable.

11. It is further not clear at all when these documents were served on the tenant as the date of service stated in the certificate of service is 26.10.22 although the document is dated 26.8.22. There clearly seems to be an error in the document. The Applicant was asked to provide a certificate of service giving the accurate information and did not do so.
12. The Applicant states that the application under rule 65 relies on ground 12A. Schedule 5 of the Housing (Scotland) Act 1988 does not include a ground for possession of houses let on assured tenancies with the identification number 12A. It is thus not clear what the ground is on which the application is based. As the application makes no further representations on the matter this means the Tribunal cannot ascertain which ground is relevant.
13. The application clearly and for more than one reason does not meet the lodging requirements set out in rule 65. It would not be appropriate for the Tribunal to accept an application in these circumstances. Furthermore the Applicant has consistently and over months ignored requests for further information from the Tribunal. It appears that he also is no longer insisting on the application.
14. For the reasons stated above, it would not be appropriate for the Tribunal to accept the application without the required Notice to Quit, AT6 notice and absence of information on the ground on which the case is based. It is therefore 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.

Legal Member
29 March 2023