

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Under Rule 8 and 5 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/20/0169

Mr Kevin McIntosh, Mrs Rosetta McIntosh 4 Montgomerie Road Saltcoats, KA21 5 DJ ("**the Applicant**")

Mrs Elizabeth Connolly, Mrs Margaret McArthur 7 Montgomerie Road Saltcoats KA21 5 DJ ("**the Respondent**")

1. On 16th January 2020, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules, being an application for eviction in relation to a tenancy. In clause 5 of the application form the Applicant refers to seeking recovery of possession of the premises as the Landlord intends to sell the Property.
2. The following documents were enclosed with the application:-
 - Copy of a tenancy agreement, stated to be a short assured tenancy between the parties dated 14th and 19th January 2006 with a commencement date of 12th December 2015.
 - AT6 notice dated 17th September 2019 and stating the date proceedings will not be raised before as 12th December 2019.
 - S33 Notice dated 31st August 2019 requiring vacant possession at 31st October 2019

- Notice to Quit dated 17th September requiring the tenant to leave on 12th December 2019
 - Certificate of posting dated 18th September 2019
 - S11 Notice to North Ayrshire council
 - Certificate of posting of S11 Notice dated 16th January 2020
3. The Tribunal requested further information from the applicant by letter dated 10th February requesting a response by 24th February and advising if there was no response that this application may be rejected. The request asked for confirmation as to whether the application was being made under Rule 65 of 66 as the Applicant had lodged S33 notice as well as an AT6. The legal member advised that if the Applicant wished to continue with this application under Rule 65 which is in respect of S18 of the Housing Scotland Act 1988 then they should provide the following
1. Proof of service of AT6 form (not just proof of posting)
 2. Proof of delivery of S11 Notice to the local authority (again by track and trace and not just proof of posting)
 3. Written submissions for the legal basis to seek to recover possession on the basis the landlord wishes to sell the Property with reference to Grounds specified in Schedule 5 to the Housing Scotland Act 1988 and any legal authorities upon which you wish to rely.
4. There was no response to these observations although the Applicant has submitted a new Form E with a new application under S33 of the Housing (Scotland) Act 1988 which they are entitled to do and which the legal member indicated was an option. The Applicant has however failed to respond to the requests in respect of this application under Rule 65 and has not indicated they wish to withdraw it.

DECISION

4. I have ~~therefor~~ considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

5.

"Rejection of application

Rule 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 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.

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 on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rules 5(4) and 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

7. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
8. The applicant has failed to respond to the Tribunal's request for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
9. In addition the following issues have been identified in the paperwork submitted:-
 - a. The Notice to Quit is not valid as it does not contain the prescribed

information required by the Notices to Quit etc (Prescribed Information) Regulations 1988.

- b. Unless there is a valid Notice to Quit which terminates the contractual tenancy, S18(6) of the Housing Scotland Act 1988 requires that a s19 notice (AT6 Notice) cannot be used in a tenancy that is not a statutory assured tenancy unless the full grounds are set out in the lease. The full grounds for termination are not referred to in the tenancy agreement and therefore the contractual tenancy needs to be terminated before a S19 notice (an AT6 notice) can be used.

10. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of both Rule 5 and Rule 8(1)(c) 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.

Jan Todd
Legal Member
4th March 2020

