



**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

35 Rigby Street, Glasgow G32 6DS

Case Reference: FTS/HPC/EV/20/0717

James Gallagher, 9 Spey Avenue, Paisley PA2 0EF ("the applicant")

Andrea May Lovatt Wilmot, 35 Rigby Street, Glasgow G32 6DS ("the respondent")

1. The applicant lodged an application dated 28 February 2020 under Rule 66 of the Procedural Rules with the First tier Tribunal Housing and Property Chamber (the Tribunal). The following documents were lodged in connection with the application:- handwritten document headed Notice to Leave dated 18 February 2020, envelope with stamp showing a refused recorded delivery attempt on 19 February 2020 . The documents are referred to for their terms and held to be incorporated herein. The application stated the Respondent also as the Applicant's representative, gave as the postcode for the property G32 6NT and did not include a S 11 Notice to the Local Authority, a tenancy agreement, a Notice to Quit, an AT5 document or a notice in terms of S 33 of the Housing (Scotland) Act 1988. It referred to the Applicant not having a landlord registration as the Respondent, allegedly his carer, is squatting in the property since

11 November 2019 and referred to Grounds 2, 11 and 15 and a domestic abuse charge. On 3 March 2020 the Tribunal wrote to the Applicant requesting the following:

- **“Please confirm the correct postcode for the property address at 35 Rigby Street, as the one entered onto the application form does not exist**

- **You have stated that Mrs Andrea Lovett is your representative at part 3 of the application form, however you have also stated that she is the tenant at part 4 of the application form – please clarify.**

- **The tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give**
- **The notice by landlord that the tenancy is a short assured tenancy (AT5)**

- **Notice to Quit**

- **The notice given to the tenant under section 33(1)(d) of the 1988 Act**

- **a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003(13) (if applicable), and**

- **evidence the section 11 of the Homelessness (Scotland) Act 2003(13) notice has been served to the local authority”**

2. On 4 March 2020 the Applicant sent an email to the Tribunal stating: “You state that Application Form F cannot be processed, as no specific Rule number has been input at part 5 of the Application form. I have stated grounds 2, 11 and 15. Must I now also state Rule 111. Application for civil proceedings in relation to a private residential tenancy as this is what my intention is. Please advise. Under the Section 11 of the Homeless Act 2003(13). Please be advised that I have emailed julie.williams@glasgow.gov.uk to inform her of my intention to evict my tenant.”
3. On 5 March 2020 the Applicant emailed the Tribunal advising “your application does not work with my computer.” He requested the letter should be sent by post. The Tribunal replied with an email quoting in the text of the email the content of the letter of 3 March 2020 requesting the information stated above.
4. On 11 March 2020 the Applicant sent various recorded delivery slips with headings for

each document and a Barclay's Bank statement from 4 September 2015 he advised showed that the furniture of the property was paid for by the Applicant.

5. By email dated 11 March 2020 to the Applicant the Tribunal again requested the outstanding information stated in the original letter to him of 3 March 2020 and again quoted the request in the body of said email. The email included the following further information : "FTS/HPC/CV/20/0838 - CIVIL PROCEEDINGS APPLICATION You have provided an unredacted bank statement with this application · Can you please confirm that you are happy for this to be crossed over to the other party in the case in it's current, unedited format? · If not, you will need to resubmit this in a redacted/edited format Please reply to this office with the necessary information for both applications by 18 March 2020, otherwise the applications may be rejected."
6. On 2 July 2020 the Applicant sent the following email to the Tribunal: "Please be advise This Tennant has refuse to pay I any rent whatsoever for a property I rent in a outright and paid for with my funds. This has now been since May 2019. The correct postcode is G32 6DS. The Tennant's name I wish to evict from the property is Andrea May Lovett Wilmot 16/05/69 and family. She has been in my property since May 19 and despite repeated requests for rental and for her and her family to leave my property she has so far refused. I hope now with the World at last coming back on line I can have this person and her family removed and my property returned to I. James Gallagher DSM BEM Royal Navy Intelligence branch SNCO Retired."
7. On 5 July 2020 the Applicant copied the Tribunal into the following email to the Respondent: "Dear Tennant, For info First Tier Eviction. Please find below the reply from the First Tier Eviction Authority. I will forward you the date of this Tribunal when I receive it, Yours without Predijuce James Gallagher DSM BEM." This email contained the email chain as shown above.

DECISION

8. 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."

9. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

10. The Applicant has not provided a copy of a tenancy agreement. He stated in the application that this was an application in terms of Rule 66, Application for order of possession upon termination of a short assured tenancy. Her was asked to provide the documents required for lodging an application under that rule, stated in rule 66 (b) a copy of—(i)the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;(ii)the notice by landlord that the tenancy is a short assured tenancy; and (iii)the notice given to the tenant under section

33(1)(d) of the 1988 Act”

11. Various attempts were made by the Tribunal as set out above to obtain the necessary documentation from the Applicant. This was not forthcoming. The Applicant has not provided a copy of a tenancy agreement or any information about the type of tenancy this may be or how this may have formed. He referred to the Respondent squatting in the property since 11 November 2019 but provided no narrative of how this could constitute a tenancy under the Housing (Scotland) Act 1988 or any other relevant legislation. It is not possible from the information received to ascertain if there was a tenancy agreement at all. The Applicant has not provided sufficient information about the tenancy to allow the Tribunal to ascertain if the application was made under the correct provision or may be constituted under different legislation.
12. The Applicant has also not provided an explanation for the inclusion of the Respondent’s details as the Applicant’s representative. It is thus not clear if the application contained the correct information in terms of Rule 66 (a) (ii) “the name, address and profession of any representative of the landlord”.
13. If the application is made under Rule 66 then the documents required, including the S 33 Notice, Notice to Quit and AT5 document and the S 11 Notice to the local authority are required in terms of Rule 66 (b) (ii) to (iv). These documents were repeatedly requested and were not submitted by the Applicant. The only relevant information provided by the Applicant was his statement that he had emailed the Council regarding his intention to evict the tenant as stated in his email to the Tribunal of 5 March 2020. This did, however, not result in the lodging of a S 11 Notice as required in terms of Rule 66 (b) (iv). The Applicant had been advised that in absence of the necessary information the application may have to be rejected.
14. For the reasons stated above the lodging requirements for an application under Rule 66 are not met.
15. In his correspondence regarding the related civil application under rule 111, the Applicant referred to an application in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). The Tribunal considered the application under the

aspect that the Applicant may have used the wrong Rule in the application and wished to make the application in terms of S 51 of the 2016 Act. In that case the lodging requirements for such an application are set out in Rule 109 of the Procedural Rules, Application for an eviction order. These include in Rule 109 (b) the requirements that the application is accompanied by (i) evidence showing that the eviction ground or ground has been met, (ii) a copy of the notice to leave given to the tenant as required under S 52 (3) of the 2016 Act; and (iii) a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act". The documentation submitted by the Applicant does not meet these requirements. The application referred to grounds 2, 11 and 15. If one assumes that this refers to grounds under schedule 3 of the 2016 Act these relate to Ground 2 the property to be sold by the lender, for which no evidence was provided, Ground 11 a breach of the tenancy agreement whereas no tenancy agreement and no information about the content of any such agreement was provided and Ground 15 Association with person who has relevant conviction or engaged in relevant anti-social behavior, which again was not evidenced. Whilst the Applicant has stated in the application that rent due was not paid, he provided no evidence of any agreement which would indicate that rental payments had been agreed and if so at what level. There is insufficient information, as set out above, to establish that there had been a tenancy agreement and if so what type of tenancy agreement may have existed and what the terms of said agreement would have been. The notice to the local authority required in terms of S 56(1) of the 2016 Act and Rule 109 (b) (iii) of the Procedural Rules was not submitted. The handwritten notice lodged in evidence was dated 18 February 2020 and gave as the date when the tenant should leave the property 27 March 2020. The application was made on 28 February 2020 and thus prior to the date when the notice asked the tenant to leave. The lodging requirements under Rule 109 of the Procedural Rules were also not met.

16. On the basis of the documentation submitted the application was not validly made. In terms of Rule 8 (c) of the Procedure Rules it would not be appropriate to accept it. The application is 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.

Petra Hennig McFatrige

Legal Member

8 July 2020