



**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/23/1440

**Parties**

**Miss Louise Irvine (Applicant)**

**Mr Donald Fox (Respondent)**

**23 Stormyland Way, Barrhead, G78 2RR (House)**

1. On 5.5.23 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 4.5.23. The application was accompanied by an unsigned tenancy agreement for the property commencing 15.4.15 with an initial period to 14.4.16, a S 11 notice, a Notice to Leave document dated 3.3.23 for the date of 3.5.23 and an AT6 notice dated 2.3.23 for a date of 3.5.23, both sent by email. The Notice to Leave gave as the ground for eviction

ground 1, which was also the ground stated on the application, with an explanation the applicant requires to move into the property. There was no Ground 1 notice and no evidence that the applicant had occupied the property as her only or principal home prior to the tenancy starting.

2. On 5.6.23 the FTT wrote to the Applicant querying the validity of the notice to quit as it appeared not to state an ish date as the date when the tenant was supposed to move out and the validity of the service of the documents.
3. The applicant replied on 16.6.23 : “The ish date may indeed be the 14th I was uncertain because Donald, the tenant, requested a temporary change of date for payments in March 2022 but has not returned his payments to the 15th and has been paying at the end of the month ever since. The notice to quit and AT6 forms were emailed to Donald to the email he provided.”
4. On 14.7.23 the FTT again wrote: 1. We note from your response of 16 June that you state that “the ish date may indeed be the 14th.” On that basis, please explain the legal basis upon which you consider that the Notice to Quit served is competent? 2. You further advise that the Notice to Quit and AT6 form was served on the tenant by way of email. Please confirm the legal basis upon which you consider that such a method of service for said notices is competent?
5. The Applicant wrote on 28.7.23 “I have sought legal advice over the eviction process. I intend to continue with the eviction but need more time to respond in full. The papers were emailed as email and text are the agreed primary communication with the tenant. The ish date for the contract is the middle of the month however the tenant has been paying late - at the end of the month for over a year, so notice was given at the start of the month.”
6. As no further reply was received the FTT sent a reminder letter on 23.8.23: “ It is noted that, by email dated 28th July 2023, you requested further time to respond to our request for further information dated 14th July 2023. Please now provide your written representations within 14 days or it is likely that the application will be rejected.”
7. The final reply of the applicant was on 8.9.23 stating: “Paper work was send on the 8th which is not an unreasonable early date considering the tenant has said he is willing to move out of the flat but requires an eviction notice to give to the council to be provided with housing. This is the tenants wish to move to a council property he has no intention of looking for another private let. All communication between myself and the tenant has be via email and text this is the preferred method of communication. Reissuing the documents and delivering them by hand will further delay the eviction notice. I am currently homeless and this delay will not benefit anyone, as the tenant is wanting the eviction notice to provide to the council and I require the flat to live in. “
8. The documents contained in the case file are referred to for their terms and held to be

incorporated herein.

## DECISION

9. 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."*

10. 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**

11. 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.
12. 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.
13. Rule 65 requires the lodging of a Notice to Quit. The Applicant has not lodged a valid Notice to Quit. As stated above in the correspondence, the Notice to Quit was not issued to an ish date of the tenancy. The tenancy agreement in clause 1 defines the period of let as 15.4.16 to 14.4.16 and makes no provision as to what would happen should the tenancy not end that date. Therefor the tenancy continues by tacit relocation under the same terms and the only valid ish date of the tenancy would thus be the 14<sup>th</sup> of April of any year. As the Notice to Quit was not issued to a valid ish date the Notice did not validly terminate the contractual tenancy agreement and this continues. As the Notice to Quit is not a valid Notice to Quit because it was not issued to a valid ish date, the requirement for a valid Notice to Quit to accompany the application is not met.
14. The AT6 form provided names ground 1 as the relevant ground, as does the application. In terms of s 18 (6) of the Housing (Scotland) Act 1988 the FTT “shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 in Part I of schedule 5 of this act or any of the grounds in Part II of that Schedule, other than ground 9, Ground 10 or Ground 17 and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question. “ S 18 (6) does not apply thus to an application made on ground 1. Regardless of the validity or otherwise of the service of the AT6 notice, the AT6 notice on its own is insufficient for the FTT to consider the application.
15. For the reasons stated above it would not be appropriate for the Tribunal to accept the application without the required Notice to Quit and 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  
2 October 2023