



**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/21/2476

**Parties**

**Miss Kirsty Aitken (Applicant)**

**Miss Noeleen Sillars (Respondent)**

**64 Kingsway, Glasgow, G14 9YS (the property)**

1. On 11 October 2021 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an eviction order under Rule 65 of the Procedural Rules which was dated 25 August 2021. The application was accompanied by a tenancy agreement for the property commencing 28 September 2017, a Notice to Leave document dated 31 January 2021 and a Trust Deed dated 17 September 2019. The Notice to Leave gave as the ground for eviction ground 1, which was also the ground stated on the application, with an explanation that the landlord requires

to sell the property due to financial hardship.

2. The tenancy agreement stated in clause 8 that the tenancy was intended to be a tenancy under the Housing Act 1988
3. On 10 November 2021 the FTT wrote to the Applicant. The letter stated: “1. Please consider and provide your comments on the application you have made. You state that it is brought under rule 65 which is seeking an eviction of an assured tenancy under the Housing (Scotland) Act 1988. The tenancy agreement provided appears to be an assured tenancy. You have however submitted a notice to leave and refer to ground 1 intention to sell your house - this notice and ground, only apply to tenancies granted after 1 December 2017 (private residential tenancies). It appears therefore you have submitted the wrong notice and want to rely on a ground which is only available to tenancies granted under the Private Housing (Tenancies) (Scotland) Act 2016. Please note intention to sell is not a ground for recovery for an assured tenancy. Please consider withdrawing this application and resubmitting it with the appropriate notice and evidence of the ground you are relying on. You may also wish to take legal advice on how to bring eviction proceedings and comply with the rules. If you do not wish to withdraw your application and wish to proceed with it, then please address the following matters:-
  2. Please provide the full address for the applicant and respondent - please amend sections 2 and 4 of the application and re-submit
  3. Please provide a copy of the notice to quit together with evidence of service
  4. Please provide a copy of the AT6 notice together with evidence of service
  5. Please provide copy of the section 11 notice together with evidence of service
  6. Please provide evidence of the ground you wish to rely on.”
4. No reply was received.
5. The FTT again wrote on 14 December 2021. The letter stated: “We refer to our letter to you dated 10th November 2021, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 7 days of this letter or the Tribunal may well reject your application..”
6. On 17 December 2021 the Applicant wrote to advise that a corrected application would follow. On 29 December 2021 the FTT received a further application form dated 17 October 2021 with a further copy of the Trust Deed, a further copy of the Notice to Leave previously submitted and an AT6 document dated 17 December 2021 giving as the relevant date in part 4 “February 2022”. Part 2 of the AT6 document stated as the ground “selling property due to debt”. No formal ground contained in schedule 5 of the Housing (Scotland) Act 1988 was included in the AT6 form. The addresses for the Applicant and Respondent still did not show the town/city of the addresses. The application was further accompanied by an incomplete S 11 notice. No evidence of service of the notices or the AT6 document was provided.
7. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

## 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.

## REASONS FOR DECISION

10. 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. S 18 of the Housing (Scotland) Act 1988 states: Orders for possession: (1)The [F1First-tier Tribunal] shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.
11. The ground stated in the applications and in the Notice to Leave issued to the Respondent and the AT6 document is that the Applicant wishes to sell the property due to financial problems. This is not a ground for possession of a house let on an assured tenancy. The only grounds under which the FTT can make an order for an assured tenancy are those stated in schedule 5 of the Housing (Scotland) Act 1988. The ground stated by the Applicant is not a ground listed in said schedule. The tenancy commenced in September 2017, which was prior to the coming into force of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice to Leave which includes the sale of the property as ground 1 is a notice which solely relates to tenancies under the 2016 Act and does not apply and is not valid for tenancies which fall under different legislation.
12. The tenancy the Applicant submitted is an assured tenancy as it meets the requirements of S 1 of the Housing (Scotland) Act 1988, although it states that it is intended to be a tenancy under the Housing Act 1988, which is not applicable in Scotland. An assured tenancy would have to be terminated by a valid Notice to Quit and not a Notice to Leave, which is a document only relevant to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 .
13. In terms of S 18 of the Housing (Scotland) Act 1988 the Tribunal cannot make an order for possession under a ground which is not stated as an ground for possession for an assured tenancy in schedule 5 of said act.
14. Rule 65 requires the lodging of a Notice to Quit and a S 11 notice with the application. The Applicant has not lodged a Notice to Quit. She has lodged only a Notice to Leave, which is not valid for assured tenancies.
15. Rule 65 requires the lodging of a S 11 notice. This was explicitly pointed out to the Applicant by the FTT. She has lodged a blank S 11 notice, not specifying the parties, property, dates or which type of application is being made and has not provided any evidence that this had been served on the local authority.
16. Rule 65 requires the lodging of an AT6 form. The AT6 form provided names a ground for eviction which does not apply to the type of tenancy and in part 4 the date when an application can be made to the Tribunal is stated as "February 2022". This is not a valid date and in any event would show that the application is premature as it was lodged prior to February 2022.
17. None of the above listed requirements of Rule 65 have been met by the application and accompanying documents.
18. 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.**

Petra Hennig McFatridge

Legal Member

18 January 2022