



**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/22/3397

Parties

Mitchells of Kennoway (Applicant)

Mr James Clark, Mrs Zoe Clark (Respondent)

Mitchells of Kennoway (Applicant's Representative)

23 Wellshot Road, Kennoway, Fife, KY8 5EG (House)

1. On or around 15.9.2022 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. The application indicated both rule 66 and rule 65 on the form. It mentioned as the ground for the application high rent arrears and the intention of the landlord to refurbish the property. The application was only accompanied by the following documents:
 - a) a letter headed "Notice to Leave" dated 5.3.2021, which advises the reader they require to leave by 9 April 2021 and if they do not the writer will be entitled to make an application for an eviction order the next business day. It did not provide the

information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.

b) a further letter together with recorded delivery proof of posting on 28.7.2022 and proof of delivery 30.7.2022, which was undated and asks the reader to leave by 26.9.2022. Again this did not contain the information as required by the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended.

c) a letter of authorization by the Applicant to the agent.

2. On 21.10.22 the FTT wrote to the agent requesting the following information: *1, You have indicated that you are seeking an order of eviction on the ground that the tenancy has come to an end. This is under Section 33 of the Housing (Scotland) Act 1988. This application has been allocated the reference FTS/HPC/EV/3398 and is under Rule 66 of the Tribunal Rules. 2. You are also seeking an order of eviction under Section 18(1) of the Housing (Scotland) Act 1988 – that one or more of the grounds in Schedule 5 of the Act are applicable. This application has been allocated the reference FTS/HPC/EV/3397 and is under Rule 65 of the Tribunal Rules. Issues common to both applications: 3. You require to submit a copy of the tenancy agreement and the AT5 Form provided to the tenants at the commencement of the tenancy. 4. Please provide a copy of the notice which you gave to the local authority to comply with the requirements of Section 11 of the Homelessness etc.(Scotland) Act 2003 together with proof of delivery such as a copy of a sent email or proof of delivered mail. Rule 65: 5. Please provide a copy of the AT6 Form served on the tenants which refers to the Ground(s) in Schedule 5 to the 1988 Act which you are relying on. This must be in proper form and give the tenants the appropriate period of notice. 6. The application form does not detail the Ground(s) in Schedule 5 to the 1988 Act which you are relying on. 7. It appears that you are relying on a ground that the tenants are in arrears of rent. If that is the case, please provide evidence that you have complied with the pre-action requirements in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Rule 66 8. Since you have not supplied a copy of the tenancy agreement, it is not clear that the tenancy has come to an end and that you are seeking to recover at an ish date (termination date). 9. You have provided a copy of an undated letter. This would not comply with the requirements of a Notice to Quit as required under Section 33 of the 1988 Act. 2 10. You have provided evidence of a letter being delivered on 30th July 2022. It is assumed that this relates to the undated letter referred to in paragraph 9. If it is, please explain why you consider (if, in other respects it complied with the requirements of a Notice to Quit), that this gives he required notice to the tenants. It is suggested that it may be advisable for you to take legal advice on the application(s) and the matters raised in this letter. Please respond by TWENTY ONE DAYS, failing which the President may decide to reject the application.*
3. No reply was received. The FTT wrote again on 12.12.2022, 2.2.2023, 17.3.2023 and

26.4.2023. The correspondence was latterly directed at the Applicant as no response had been received from the agent. No reply was received although the last letter was sent by email and first class post.

4. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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

7. 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.
8. The application was not accompanied by the tenancy agreement. It was not accompanied by the notice given to the local authority as required. It was not accompanied by the notice AT6 given to the tenant. It did not provide evidence of the ground on which the application was based. It was not accompanied by a valid Notice to Quit as the notice lodged did not meet the requirements of the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended. The application thus does not comply with the lodging requirements stated in rule 65 b (i), (ii), (iii),(iv) and (v) of the Rules of Procedure.
9. For the reasons stated above it would not be appropriate for the Tribunal to accept the application as this does not fulfill the requirements of a valid application.

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

8 June 2023