



**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/22/3812

Parties

Mr Iain McColl (Applicant)

Miss Fiona Popper (Respondent)

5 Keir Hardie Avenue, Falkirk, FK2 9JL (House)

1. On or around 19 October 22 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 either dated nor signed. The application was accompanied by an AT5 document, a Notice to Quit with cover letter, a S 33 notice and a document titled Tenant Information Pack (one page).
2. On 18 November 22 the FTT wrote to the Applicant as follows: “1. You have submitted an application under Rule 65, which concerns repossession under s18 of the Housing (Scotland) Act 1988. To proceed under said Rule, you require to provide a copy of the

Form AT6 served on the tenant, together with evidence of service. 2. If alternatively you wish to proceed on the basis of the Notice to Quit and s33 Notice provided (in terms of s33 of the Housing (Scotland) Act 1988) then this would be an application under Rule 66. Please confirm if you wish to amend to said Rule? 3. Your application form is unsigned – please resubmit a signed application form. 4. The application submitted is in the sole name of Iain McColl as applicant. The title deeds show that the property is owned jointly between Ian Francis McColl and Valerie McColl. Please either (1) submit an amended application form reflecting joint applicants or (2) provide written consent from Valerie McColl that she consents to the application proceeding in the sole name of Iain McColl. 5. Please provide the landlord registration number for Valerie McColl. 6. Please provide a copy of the full tenancy agreement. 7. Please provide proof of service of the repossession notices. 8. Please provide a copy of the s11 notice on the local authority, as required under s11 of the Homelessness etc. (Scotland) Act 2003, and evidence of service of same. 9. The tribunal must be satisfied that it is reasonable to evict, in all repossession applications. Please note that in any Case Management Discussion to follow, you will require to address the Tribunal on the reason for seeking a repossession order and the reasonableness of granting such an order.” The Tribunal requested a reply by 2 December 22 but no reply has been received.

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

DECISION

4. 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."

5. 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

6. 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.
7. The application was not signed and dated. It was not accompanied by the tenancy agreement as a full document. 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 the ground on which the application was based and did not provide any evidence that such ground had been met. The application thus does not comply with the lodging requirements stated in rule 65 a (iv) and b (i), (ii), (iv) and (v) of the Rules of Procedure.
8. 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-McFatrige

Legal Member

19 December 2022