



**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

12F Aitken Street, Airdrie, ML6 6LS

Case Reference: FTS/HPC/EV/20/0883

John Clydesdale ("the applicant")

Janette Clarke ("the respondents")

1. On 11 March 2020 the First –tier Tribunal for Scotland, Housing and Property Chamber received an Application for an eviction order under Rule 65 of the Procedural Rules. The application was dated 6 March 2020. The application was accompanied by a tenancy agreement, an AT5 document, a Notice to Quit which was dated and sent 21 October 2019, a S 33 notice dated 21 October 2019 and a recorded delivery confirmation for a sent date of 21 October 2019.
2. The documents lodged with the application and the application document are referred to for their terms and held to be incorporated herein.
3. On 13 March 2020 the Tribunal wrote to the Applicant. The letter stated: *"The following further information is required from you before your application can proceed to the Chamber President for consideration:*

1. A copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy (AT6). 2. a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003(13). Please reply to this office with the necessary information by 20 March 2020, otherwise the application may be rejected.

4. No further documentation was received from the Applicant.

5. The Notice to Quit dated 21 October 2019 states: I hereby give you formal Notice to Quit the premises occupied by you at 12f Aitken Street, Airdrie North Lanarkshire ML6 6LS by“ but does not state a date on which the Respondent is required to quit the property.

DECISION

6. 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."

7. 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

8. The Application indicated as the relevant rule under which it should be considered Rule 65 of the Procedural Rules. This requires:

65. Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b)be accompanied by—

(i)a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii)a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii)a copy of the notice to quit served by the landlord on the tenant (if applicable); and

(iv)evidence as the applicant has that the possession ground or grounds has been met;

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

(vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable),

and

(c) be signed and dated by the landlord or a representative of the landlord.

9. The application was not accompanied by the notice served on the tenant by the landlord on intention to raise proceedings and was not accompanied by a copy of the notice given to the local authority as required in Rule 65 (b) (ii) and (v).
10. The documents had been requested on 13 March 2020 with a time limit for production of said documents on 20 March 2020.
11. The documents were not produced.
12. A delay in considering the application further had arisen due to the Covid-19 lockdown provisions.
13. The application was incomplete in terms of Rule 65
14. The Notice to Quit lodged with the application and required in terms of Rule 65 (b) (iii) was also not valid as it does not contain a date on which the Respondent was required to quit the property.
15. I have further considered the application in terms of Rule 66 Application for order pro possession upon termination of a short assured tenancy. The reason for this was that the letter from the letting agent letter of 9 January 2020 lodged as a production referred to an application under S 33 in the handwritten amendments to the letter.
16. Any such application would have to be made under Rule 66 which states:

Application for order for possession upon termination of a short assured tenancy

66. Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—

(a) state—

- (i) the name, address and registration number (if any) of the landlord;
- (ii) the name, address and profession of any representative of the landlord; and
- (iii) the name and address of the tenant;

(b) be accompanied by 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;

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

(v) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable),

and

(c) be signed and dated by the landlord or a representative of the landlord.

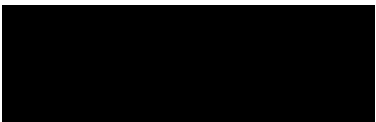
17. Rule 66 (b) (v) requires the application to be accompanied by a copy of the notice by the landlord given to the local authority. This had been requested in the Tribunal's letter to the Applicant of 13 March 2020 and had not been produced.
18. Rule 66 (b) (iii) further requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application does not contain a date by which the Respondent was required to quit the property. It is not a valid notice.
19. I consider that neither in terms of Rule 65 nor in terms of Rule 66 the application is complete. It was not accompanied by documents required by said rules as stated above, in particular it was not accompanied by a copy of the notice given to the local authority as required by Rules 65 (b) (v) and Rule 66 (b) (v). The Applicant was provided with an opportunity to remedy this. He did not reply to the Tribunal's letter of 13 March 2020.
20. The application is further not accompanied by a valid Notice to Quit as required in Rule 65 (b)(iii) and Rule 66 (b) (iii) of the Procedural Rules.
21. It would not be appropriate for the Tribunal to accept an incomplete application 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
13 July 2020