



**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/22/2575

Parties

Mr Kevin Johnston (Applicant)

Mr John Devaney (Respondent)

3 Burnside Street 1/R, Dundee, DD2 3AS (Property)

1. On 27.7.22 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 dated 24.7.22. The application was accompanied by a tenancy agreement for the property commencing 19.11.16 with an initial period to 19.11.17, a S 11 notice, bank statements, a Notice to Leave document dated 24.6.22 and an AT6 notice dated 24.6.22, both sent recorded delivery on 24.6.22. The Notice to Leave gave as the ground for eviction

ground 8, which was also the ground stated on the application, with an explanation that there are rent arrears.

2. On 2.9.22 the FTT wrote to the Applicant. The letter stated: “1. You have provided a copy of notice to leave. As this is an assured tenancy you need to provide a copy of a notice to quit (not a notice to leave) along with proof of service on the Respondent validly terminating the lease. 2. Please provide proof of service of the section 11 Notice on the local authority. 3. Please provide proof of service of the AT6 on the Respondent. 4. Please provide a rent statement showing dates and amounts of rent due, dates and amounts of rent paid and a running total of arrears. “
3. On 15.9.22 the Applicant wrote and enclosed a Notice to Quit dated 9.9.22 with recorded delivery slip. The Notice to Quit stated as the date of effect of the notice 23.9.22. He also attached a further AT6 document dated 9.9.22 stating as the date when proceedings could commence 9.9.22.
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 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 and not a Notice to Leave, which is a document only relevant to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016.
9. Rule 65 requires the lodging of a Notice to Quit. The Applicant has not lodged a valid Notice to Quit. As stated above, the Notice to Leave dated 24.6.22 is not a document that can validly terminate an assured tenancy because it is a document only relevant for Private Residential Tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 and not Assured Tenancies under the Housing (Scotland) Act 1988. The Notice to Quit dated 9.9.22 has not been given to a valid ish date of the tenancy. The tenancy started on 19.11.16 and initially was put in place for one year to 19.11.17. It was not terminated at that stage and no provision is made in the tenancy agreement about any further duration. In that case the tenancy is subject to tacit relocation, which automatically renews the tenancy under the previous terms, in this case from year to year. The only valid ish date for the tenancy is thus 19 November of any year. The Notice to Quit was given to the date of 23.9.22 and thus not to an ish date. The Notice to Quit is invalid for that reason. Furthermore the Notice to Quit gave only 14 days from its date to the date on which the notice should become effective. In terms of S 112 of the Rent (Scotland) Act 1984 the irreducible minimum period for a valid Notice to Quit in Scotland is currently 28 days. The Notice to Quit not valid for that reason also.
10. The first AT6 form provided names ground 8 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 8..... and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question. The tenancy agreement lodged makes no specific provision quoting the individual grounds under schedule 5 of the Housing (Scotland) Act 1988 and thus in this case a Notice to Quit terminating the contractual assured tenancy would be required and an AT6 form only does not suffice.

11. 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 October 2022