

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

1 Bellfield Drive, Eddleston, Peebles, EH45 8RG

Case Reference: FTS/HPC/PR/21/1183

Parties

Mr Francis Gilhooley (Applicant)

Mrs Kathleen Maria Mansfield (Respondent)

Mrs Angela Gilhooley (Applicant's Representative)

Background:

1. On 18 May 2021 an application in terms of Rule 78 of the Procedural Rules was lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT).
2. The application was for a payment order of £4000. Box 7 b of the application form clearly contained more text than the text shown on the application form submitted. The tenancy agreement was not included, neither was a copy of the order of possession
1. The FTT requested further information, in particular a copy of the order of possession in letters to the applicant's representative of in the following terms: 1 June 2021 "*1) Please provide a copy of the tenancy agreement in respect of the property. 2) Please provide a copy of the order for possession which the landlord obtained against you. 3) Paragraphs 7b and 7c in your application form appear to contain further information which extends beyond the visible field of the boxes in those sections. Could you please resend the application form in a format which allows the Tribunal to*

scroll down and see the further information, or alternatively, please provide the contents of 7b and 7c on a paper apart. ", 30 June 2021: "1. Please provide a complete copy of the tenancy agreement and order for possession or notice to leave." and 15 July 2021: "The Tribunal has repeatedly requested a copy of the tenancy agreement. You have provided a signature page and one page of what appears to be a tenancy agreement. You have made an application under rule 78 which relates to applications under S 21 of the Rent (Scotland) Act 1984. You then stated you had been given the wrong type of notice. It is not clear from the documents you submitted what type of tenancy agreement you had entered into and why and when this terminated. ..."

2. The answers received included copies of an AT6 document and a Notice to Quit and a S 33 notice but no full copy of the tenancy agreement and no copy of an order for possession. The missing text in the application was not provided.
3. The case documents are referred to for their terms and held to be incorporated herein.

DECISION

1. 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."

2. 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.

Relevant Legislation

Rule 78 of the Procedural Rules:

Application for compensation for misrepresentation or concealment by landlord

78. Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

(a) state—

(i) the name and address of the former tenant;

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

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

(b) be accompanied by—

(i) evidence of misrepresentation on the part of the landlord; and

(ii) a copy of the order for possession; and

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

REASONS FOR DECISION

1. The Tribunal can only accept an application under rule 78 of the Procedural Rules if the application is made in respect of an order for possession granted for a tenancy under the Rent (Scotland) Act 1984.
2. The lodging requirements include in Rule 78 (b) (ii) a copy of such an order for possession.
3. The lodging requirements for an application under Rule 78 are not met.
4. The applicant was advised of this and was repeatedly given the opportunity to lodge the

missing document to complete the application under Rule 78,

5. Based on the available information the application does not conform to the requirements for an application under Rule 78 of the Procedural Rules. It would not be appropriate for the Tribunal to accept an application that does not meet the lodging requirements for the rule under which it was made. Rule 78 (b) (ii) requires the application to be accompanied by a copy of the order for possession. This was not lodged. The application remains incomplete. The application 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

30 July 2021