



**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/24/0142

Parties

Mr Kevin Watt (Applicant)

Miss Laura Watt (Respondent)

31 St Winnings Well, Kilwinning, Ayrshire, KA13 6JZ (House)

1. On 11.01.24 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, dated 09.01.24. The application was not accompanied by any documents. The paper apart referred to a Notice to Quit having been served and having expired on 01.12.23.
2. On 12.01.24 22 the FTT wrote to the Applicant as follows: “The following further information is required from you before your application can proceed to the Chamber President for consideration. Your note says you have no other documentation, however a notice to quit and

council acceptance has been mentioned so if these can be provided please do so. . 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 • a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”) • evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”) being served by the landlord on the tenant • a copy of the notice to quit served by the landlord on the tenant (if applicable) • evidence of the notice to quit being served by the landlord on the tenant (if applicable) • evidence tending to show that the possession ground or grounds has been met • a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) • evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority Please reply to this office with the necessary information by 19 January 2024, otherwise the application may be rejected.”

3. On 15.01.24 the applicant replied he had shredded the Notice to Quit and no longer had access to this and he has no other documents and had just helped out a family member at the time.
4. On 15.02.24 the FTT again wrote to the applicant in the following terms: “Your application has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters: In your application, you indicate you are not a landlord and in your further response dated 15 January 2024, you have again confirmed that you have no documents which show that there is a tenancy agreement in relation to this property. However, your application form indicates that you are seeking an eviction order on the basis that there is either an assured or short assured tenancy of the property and that you have a relevant ground for eviction. You indicate the property is occupied by your sister. Has she been paying rent to you over the period of time of her occupation? In the absence of any documentation demonstrating that there is a tenancy of this property, then this tribunal may have no jurisdiction. This tribunal can only deal with eviction applications arising from tenancies created under a number of different pieces of legislation. In the absence of any documentation showing that there is a tenancy agreement under such legislation, and in the absence of proof of service of the appropriate notices, it is impossible for this tribunal to proceed with your application. We would respectfully suggest that you seek independent legal advice on the situation to determine whether you require to pursue an alternative remedy at the local sheriff court. Please note the tribunal is an independent judicial body and cannot provide you with that advice. 2 Please respond to this letter within the next two weeks . Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Further queries may arise upon receipt of your responses. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and

Property Chamber (Procedure) Regulations 2017 Please reply to this office with the necessary information by 29 February 2024.”

5. By 21.03.24 no further reply has been received.
6. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

8. 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

9. 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.
10. Rule 65 (b) requires the following documents to be provided with an application: (i) a copy of the tenancy agreement or, if this is not available, as much information about the tenancy as the landlord can give, (ii) a copy of the notice served on the tenancy by the 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), (iv) evidence that the possession ground or grounds has been met, (v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003. The application was not accompanied by the tenancy agreement and when asked further information, such as whether rent had been paid, no further information was provided. At present it is not clear if this was an assured tenancy, when it commenced, what the terms of the tenancy agreement were, whether rent was paid and what the agreement about termination of the tenancy was. It was not accompanied by a Notice to Quit. The applicant also did not provide any specific information as to when it was issued, to which date it was issued, how it was served and who it was served on. 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 any evidence that prior to the start of the tenancy the applicant occupied the property as his only or principal residence. The application thus does not comply with the lodging requirements stated in rule 65 b of the Rules of Procedure.
11. The applicant had been given the opportunity to provide further information and documentation and has not done so. He was advised that this may result in the application being rejected.
12. 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
21 March 2024