



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/EV/23/4175**

**Parties:**

**Andrew Walker ("the Applicant")**

**Lorraine Wilson ("the Respondent")**

**Tribunal Member:**

**H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.**

**Background**

1. An application for an eviction order was made under Rule 65 on 21<sup>st</sup> November 2023, with associated documents.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant on 19<sup>th</sup> December 2023 requesting the following information and documentation:

Before a decision can be made, we need you to provide us with the following:

1. You have applied for an order of eviction but appear to have just sent the notice to quit and a s33 notice which has not yet expired so it appears your application is premature. Please confirm you wish to withdraw this and reapply if and when the notices have expired and the tenant has not left.



2. Even if this application was not premature there are some points that will need clarifying;-

a. The duration of the lease is not clear and any notice to quit needs to match the ish date or termination of the lease.

b. You have currently applied under Rule 65 which is for a s18 application where an AT6 needs to be served but selling a property is not one of the grounds under S18.

c. If you wish to rely on s33 you require to show an AT5 served before the lease began.

d. You need to show evidence of valid service on the tenant

e. You need to provide a copy of the s11 notice that requires to be served on the local authority together with evidence of service of it on the local authority.

Please let us have your response to this request and if please note if you wish to continue with the application you will require to satisfy the Tribunal why an application is valid when the notices have not yet expired and will need to provide a response to the additional queries. Failure to respond is likely to result in the application being rejected. You may wish to consult a solicitor or other legal agency before responding.

Please reply to this office with the necessary information by 2 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

3. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant on 15<sup>th</sup> February 2024 requesting the outstanding documentation. No response was received.
4. A further request for the outstanding information and documentation was afforded to the Applicant by email dated 14<sup>th</sup> March 2024.
5. The application was considered by a Legal Member on 21<sup>st</sup> March 2024.



## Reasons for Decision

6. The Tribunal considered the application in terms of Rule 8 of the Chamber 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 ...*

*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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. The Applicant has failed to provide the information and documentation requested. The application appears to have been made prematurely, before the date on which the Respondent is to remove from the property, and it is not clear that the notice to quit was served to an ish date of the tenancy.
8. The rule under which the application has been made is not clear. If it is a Rule 65 application, no Form AT6 has been included with the papers, and the ground upon which the Applicant founds in the application form is not a relevant ground as set out in Schedule 5 to the Housing (Scotland) Act 1988. If it is intended to be a Rule 66 application, no Form AT5 has been lodged, and this is required in terms of Rule 66 before an application can be accepted.
9. Furthermore, the application cannot be accepted without a copy of the notice given to the local authority as required under section 19A of the 1988 Act. A copy of this document is also required in terms of Rule 65 and Rule 66 before an application can be accepted.
10. There is good reason to believe it would not be appropriate to accept the application. The application is accordingly rejected.



## Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.



21<sup>st</sup> March 2024

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Legal Member/Chair

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Date