



**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/24/0186

**Parties**

**MR LEE ANDERSON (Applicant)**

**MISS TANITH ANDERSON (Respondent)**

**192 SOUTH VICTORIA DOCK ROAD, DUNDEE, DD1 3BF (House)**

1. On 12.01.24 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. It mentioned as the ground for the application that the property is required for personal use.
2. In the course of further correspondence the following documents were provided by the applicant:
  - a) a tenancy agreement giving as the term 01.10.12 to 30.11.13.
  - b) an incomplete AT6 notice missing the last page
  - c) a text exchange between landlord and the tenant with the tenant confirming

receipt of what is described "Homelessness Act". The text is undated.

d) a partial AT5 notice.

e) A letter giving notice regarding grounds 1 and 2 addressed to the tenant dated 01.10.12

3. The FTT had requested in correspondence the following additional information: • 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. The FTT had also requested confirmation of the landlord registration.
4. In answer to this the applicant replied that his registration had expired and that he had provided all the documents he had. He did not provide a Notice to Quit and proof of service, a S 11 notice and proof of service, valid proof of service for the AT6 document, which remains incomplete.
5. The FTT had also advised him in a letter of 20.02.24: You have stated in the Form AT6 that you are seeking possession under ground 4, in that you wish to live in the property. That ground is found within schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 which relates to private residential tenancies that commenced after 1st December 2017. It appears however that your tenancy is in fact an assured tenancy under the Housing (Scotland) Act 1988, having commenced in 2012. There are separate eviction grounds for assured tenancies that are contained within schedule 5 of the Housing (Scotland) Act 1988. The AT6 would therefore require to specify one of those grounds. You require to serve a valid Form AT6 on the tenant prior to submitting an application to the Tribunal. You may also require to serve a Notice to Quit, depending on the terms of the tenancy agreement. On the face of it your Form AT6 would appear to be invalid. Please provide comment on why you believe the application can proceed with the current Form AT6. Alternatively please confirm if you are content for the application to be withdrawn, in which case you can resubmit a further application in due course once the correct notices have been served.
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 requires the lodging of a Notice to Quit with the application. Rule 65 requires the lodging of a S 11 notice. Rule 65 requires the lodging of an AT6 form.
11. The application was not accompanied by a valid Notice to Quit which meets the requirements for a notice to quit terminating the contractual relationship between parties of a tenancy under the Housing (Scotland) Act 1988. No Notice to Quit at all was provided. Both grounds on which the application may possibly be based, ground 4 which was stated on the AT6 form and ground 1 and 1b, which may meet the description of the ground provided would require a Notice to Quit being served to terminate the contractual tenancy in terms of S 18 (6) of the Housing (Scotland) Act 1988.
12. The applicant has not provided a complete AT6 document and in particular missed out the page which contains part 4 of the form and shows the date on which proceedings could first be raised, the date of the notice and the signature. The ground stated on the AT6 form is stated as ground 4. Ground 4 of schedule 5 of the Housing (Scotland) Act 1988 refers to tenancies for a specified period not exceeding 12 months whereas the reason for the notice is described as the landlord wishing to move into the property. The information provided was thus inconsistent. The applicant had been asked to clarify this and to provide a full notice. He did not do so.
13. The applicant has not provided a S 11 notice although the FTT had advised on more than one occasion that this was required.
14. The application thus does not comply with the lodging requirements stated in rule 65 b (ii), (iii) and (v) of the Rules of Procedure. The applicant had been provided with the opportunity to remedy this and has not done so.
15. For the reasons stated above it would not be appropriate for the Tribunal to accept the application as this does not fulfill the lodging 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.**

Legal Member  
26 March 2024