



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.**

In respect of application by Mr Stuart Dalziel of Abbey Forth Property Management on behalf of Mrs Kimberly Mollison in terms of Rule 65 of the Rules.

**Case reference FTS/HPC/EV/21/2479**

At Glasgow on the 31 March 2022, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Abbey Forth Property Management on behalf of Mrs Kimberly Mollison, the owner and landlord of the property at 80 D Main Street Kilwinning ‘the property’, for recovery of possession of the property in terms of Rule 65.
2. The application was dated 8 October 2021 and received by the tribunal on 12 October 2021.
3. The application was accompanied by the following:-
  1. Tenancy agreement for let of the property from 12 December 2016 to 13 June 2017 and month to month thereafter.
  2. Notice to quit dated 24 February 2021
  3. S33 notice dated 24 February 2021.

4. This application was originally made in terms of rule 66. The tribunal have made several requests for further information since it was first made in October 2021. Some further information has been lodged but Mr Dalziel on behalf of the applicant has fundamentally failed to answer other substantive issues, despite several reminders from the tribunal.

5. The tribunal wrote on 8 November 2021 as follows:

*The application is made in terms of S 66 but states that the ground for eviction is ground 8. If you wish to pursue the matter on the basis that a Short Assured Tenancy has been brought to an end then this is to be stated on the application. If this is what you wish to do please amend the application accordingly and provide the AT5 form. 2. If you wish to pursue the matter under ground 8 please submit the AT6 document you served for that ground and amend the application to the applicable rule. In both cases please submit • proof of service of the S 11 Notice on the local authority and • authorisation of the representative by the applicant Please reply to this office with the necessary information by 22 November 2021.*

6. A letting manager from Abbey Forth Property Management wrote on 15 November 2021 with an amended application in terms of rule 65, the AT6 and s11 notice. No mandate was sent.

7. The tribunal made a further request for information on 29 November 2021 as follows:

*1. Please provide the remainder of the information requested in our letter to you of 8 November 2021. In particular, please provide: (a) Evidence of service of the section 11 Notice on the local authority (you have only sent a copy of the section 11 notice); (b) Authorisation from the applicant for the representative to act on her behalf. 2. Please also provide proof of service of the notice to quit and AT6 on the Respondent. 3. Please also provide evidence of compliance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 given that you are relying upon Ground 8. Please reply to this office with the necessary information by 13 December 2021. If we do not hear from you within this time, the President may decide to reject the application.*

8. A mandate was sent and some information in compliance with the pre action requirements. Proof of service of the notice to quit and AT6 was not provided. The tribunal sent a further letter on 22 December 2021 as follows:

*I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: A legal member of the Tribunal with delegated powers of the Chamber President has considered the information which was recently provided by you. It appears that you have still not provided evidence of proof of service of the Notice to Quit and AT6. You have also not provided proof of service of the Rent Arrears Pre- Action protocol records. Please provide information on how they were sent to the tenant. Please reply to this office with the necessary information by 5 January 2022. If we do not*

9. Proof of service of the AT6 and notice to quit were not provided despite reminders on 27 January 2022 and 2 March 2022. The letter of 2 March 2022 stated:

*I refer to the Tribunal's letter of 27th January which requested for the 3rd time evidence of how and when the notice to quit and AT6 were served on the tenant. This is required to show that you have a stateable case. An AT6 can only be used and relied upon up to 6 months after the date referred to as the date the tenant should have left the property, as the 6 months will apparently expire on 13th March 2022 you have one more opportunity to provide the information we require namely 1. Proof of service of the Notice to Quit and Form AT6. Failure to supply this or explain how they were served and when will result in your application being rejected. Please respond no later than 11th March 2022.*

10. No reply was received.

11. S19 of the Act provides :

19 Notice of proceedings for possession.

(1) The [F1 First-tier Tribunal] shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) [F2 the Tribunal] considers it reasonable to dispense with the requirement of such a notice.

(2) The [F3 First-tier Tribunal] shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground [F4 and particulars of it are] specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the [F3 Tribunal].

(3) A notice under this section is one [F5 in the prescribed form] informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of [F6 two weeks or two months] [F6 28 days, two months, three months or, as the case may be, six months] (whichever is appropriate under subsection (4) [F7 or (4A)] below) from the date of service of the notice.

[F8 (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.]

[F8 (4) The minimum period to be specified in a notice served before 3 October 2020 as mentioned in subsection (3)(b) is—

(a) two months if the notice specifies only Ground 9 in Part II of Schedule 5 to this Act,

*(b)three months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a))—*

*(i)Ground 1 in Part I,*

*(ii)Ground 15 in Part II,*

*(c)six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—*

*(i)Grounds 2 to 8 in Part I,*

*(ii)Grounds 10 to 14 in Part II,*

*(iii)Ground 16 or 17 in Part II.*

*(4A)The minimum period to be specified in a notice served on or after 3 October 2020 as mentioned in subsection (3)(b) is—*

*(a)28 days if the notice specifies only Ground 15 in Part II of Schedule 5 to this Act,*

*(b)two months if the notice specifies Ground 9 in Part II of Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a)),*

*(c)three months if the notice specifies Ground 1 in Part I of Schedule 5 to this Act (whether with or without also specifying either or both of the grounds referred to in paragraphs (a) and (b)),*

*(d)six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—*

*(i)Grounds 2 to 8 in Part I,*

*(ii)Grounds 10 to 14 in Part II,*

*(iii)Ground 16 or 17 in Part II.]*

**(5)The [F9First-tier Tribunal] may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.**

**(6)Where a notice under this section relating to a contractual tenancy—**

**(a)is served during the tenancy; or**

**(b)is served after the tenancy has been terminated but relates(in whole or in part) to events occurring during the tenancy,**

**the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.**

**(7)A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.**

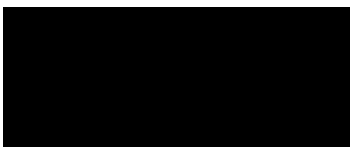
12. The AT6 has expired. It is dated 24 February 2021 with a 6 month notice period and stating that proceedings will not be raised before 13 September 2021. The application has not been accepted within 6 months of 13 September 2022. In terms of s19(7) of the Act, the notice shall cease to have effect after 6 months if proceeding have not been raised. The AT6 therefore expired on 13 March 2022.
13. Further, as this is a ground 8 application the tribunal cannot dispense with notice in terms of s19(5) of the Act.
14. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if ***“they consider that an application is vexatious or frivolous”***. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall )Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”.
15. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. The essential information has not been provide despite numerous reasonable requests. The AT6 has now expired. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Lesley Anne Ward

Legal Member