



**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/22/1813

Parties

Mrs Jayne Graham (Applicant)

Ms Maxine Colligan (Respondent)

43 Gateside Road, Whitburn, EH47 0NQ (House)

1. On 10.6.22 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made initially under rule 66 of the Procedure Rules and S 33 of Housing (Scotland) Act 1988 (the 1988 Act). Following extensive correspondence regarding the validity of the Notice to Quit and the requirement for further documents the application was finally amended to an application under rule 65 and S 18 of the Act on ground 8 of schedule 5 of the Act on 19.9.22. Further documentation and information, in particular evidence of the development and level of rent arrears to evidence ground 8 was then sought by the FTT in letters of 18.10.22

and 18.11.22 and 15.12.22. By 7.2.23 the Applicant had provided information about the arrears arising in 2018, 2019, 2020 and 2021 but still no information about the arrears in place when the AT6 document was served on 31.3.22. The AT6 document states "tenant has more than 3 months arrears" but provides no details and no up to date rent statement. No information about the precise arrears level at the relevant time in 2022 has ever been provided. This seems in a large part due to the Applicant being unsure about what precisely was required. However, detailed instructions had been provided by the FTT on several occasions.

2. The AT6 document gave as the date proceedings could be first started 3.6.2022.
3. The documents lodged by the Applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

DECISION

4. 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."

- 5. 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

1. The lodging requirements for an application under rule 65 (b) include the requirements to lodge the requirement to lodge (i) a copy of the tenancy agreement or as much information as the landlord can give in, (ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy in, (iii) a copy of the notice to quit, (iv) evidence as the applicant has that the possession ground or grounds has been met and (v) a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003. In terms of rule 5 (3) "the application is held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement."
2. The FTT wrote to the Applicant on several occasions requesting a rent statement showing the level of rent and when the arrears accrued. Only partial information has been provided about this.
3. S 19 (7) of the 1988 Act states: 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.
4. The AT6 document states as the date on which proceedings first could have been raised 3.6.22. The 6 months period set out in S 19 (7) of the 1988 act thus expired on 3.12.22. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: " [1] The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private

Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and subordinate legislation in the form of regulations made by the Scottish Ministers. In UT60 [2019] Sheriff Di Emidio states at paragraph 14: “It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT’s decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant.”

5. As the information had not been provided as required the application is still classed in terms of rule 5 (3) of the rules as not having been made. The application remains incomplete as at that date because it did not provide the required evidence about the ground being met. As at 3.12.22 the AT6 notice can no longer be relied on in terms of S 19 (7) of the 1988 Act. Because S 19 (7) of the 1988 Act applies, it is now not possible to complete the application. It would not be appropriate to accept an incomplete application.
6. The application is thus 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 to you on request.

Petra Hennig McFatridge
Legal Member
7 February 2023