



**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/23/3905

Parties

Mr Stuart Robertson (Applicant)

Tracy Storrier (Respondent)

9 Muir Street, Forfar, DD8 3JY (House)

1. On 6.11.23 the First-tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 66 of the Procedure Rules from the Applicant. There was not accompanying documentation with the application.
2. On 7.11.23 the FTT requested the following further information:
 - the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give
 - the notice by landlord that the tenancy is a short assured tenancy ("AT5")
 - the notice given to the tenant under section 33(1)(d) of the 1988 Act
 - evidence of the notice given to the tenant under section 33(1)(d) of the 1988 Act being served by the landlord on the tenant
 - the Notice to Quit
 - evidence of the notice to quit being served by the landlord on the

tenant • 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 • a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable)

3. The Applicant on 13.11.23 then provided a tenancy agreement commencing 1.7.17 with an ish date of 2.12.17 and a provision for continuation month to month, an AT5 form, a Notice to Quit dated 30.6.23 for 9.9.23 and S 33 notice with the same dates and confirmation of delivery of both documents.
4. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

- 6. 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

Application for order for possession upon termination of a short assured tenancy

66. Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—

(a) state—

- (i) the name, address and registration number (if any) of the landlord;
- (ii) the name, address and profession of any representative of the landlord; and
- (iii) the name and address of the tenant;

(b) be accompanied by a copy of—

- (i) the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
- (ii) the notice by landlord that the tenancy is a short assured tenancy; and
- (iii) the notice given to the tenant under section 33(1)(d) of the 1988 Act;
- (iv) the notice to quit served by the landlord on the tenant;
- (v) a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and
- (vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

and

(c) be signed and dated by the landlord or a representative of the landlord.

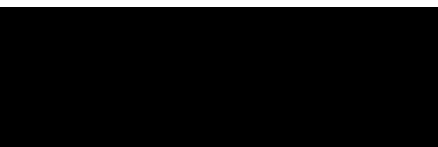
1. The decision is made on the basis that the application was made under rule 66. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application and actually sent to the Respondent requires the tenants to quit the premises on 9.9.23. The tenancy agreements shows as the relevant ish date the 2nd day of any month of the year. The Notice to Quit must be to an ish date. The Notice to Quit clearly is not issued to a valid ish date and thus cannot be used as the basis for an application under rule 66.
2. I consider that the application is not accompanied by a valid Notice to Quit as required in Rule 66 (b) (iv) of the Procedural Rules. The Notice to Quit was not to an ish date and thus invalid. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
3. The application was also not accompanied by a S 11 notice and evidence of how this was given to the local authority. This document had been requested in the letter of 7.11.23 and is required for a valid application under rule 66 in terms of rule 66 (b) (v). The application thus does not meet the lodging criteria of that rule.
4. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit and without a s 11 notice. The lodging requirements for such an application have not been met. The application in terms of rule 66 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 procedure can be forwarded to you on request.



Legal Member

1 December 2023