

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT

Under Rules 5, 8 & 66 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/20/0045

Mr. Graham Taylor ("the Applicant")

Mr. Krzysztof Marzec ("the Respondent")

Background

1. On 10 January 2020, an application was submitted by the Applicant's Representative. The application is made under Rule 66 of the Procedural Rules. The following documents were enclosed with the application: Pages 23 & 24 of what appeared to be from a Scottish Private Residential Tenancy dated 17 May 2019 with a tenant address of 3/L 26 Albert Street, Dundee DD4 6 QG, an execution of service by Sheriff Officers dated 20 November 2019 which referred to service of "a Notice to Quit and Notice under Section 33 of Landlord's Requirement to possession of Property at Termination of Assured Tenancy" and with an accompanying cover letter, an account for an outlay which appeared to relate to an internal accounting exercise for the cost of service by Sheriff Officers, A copy Section 11 Notice under the Homelessness etc. (Scotland) Act 2003 Notice by Landlord of proceedings for possession which did not state in it a Local Authority, did not state the Court or Tribunal in which the Proceedings might subsequently be raised and did not specify the legislation under which proceedings are being notified.
2. On 10 January 2020 the Tribunal wrote to the Applicant (and e mailed) requesting

information as follows:

'The following further information is required from you before your application can proceed

- The notice by the landlord that the tenancy is a short assured tenancy (AT5)
- Notice to Quit
- The notice given to the tenant under section 33 (1) (d) of the 1988 Act
- Evidence the section 11 of the Homelessness (Scotland) Act 2013 notice has been served on the local authority

Please reply to this office with the necessary information by 17 January 2020 otherwise the application will not be accepted'.

3. On 10 January 2020 the Applicant's Representative submitted further documents by e mail as follows: a copy *Tenancy Application Form* from the Respondent with confidential personal details contained therein dated 17 May 2019 for the Respondent and 26E Albert Street, DD4 6QG; a document which appeared to be an abandonment Notice dated 11 August 2019 called a 'Notice of Intention to take over a Flat/House'.
4. On 11 January 2020 the Applicant's Representative wrote in response saying "Can you please tell me what you need instead of a automatic e mail".
5. On 13 January 2020 the Applicant's Representative was sent a copy of the letter of 10 January 2020 with the observation that the Case Worker was aware further documents were sent in however these were not the requested documents.
6. On 22 January 2020 further documents were submitted by the Applicant's Representative as follows: copy e mail to 'edo@dundee city.gov.uk dated 22 January 2020 for 26 Albert Street; a copy AT5 for 3/L 26 Albert Street, Dundee, DD4 6QG dated 17 May 2019.
7. As at the date of this Decision no further documents have been received from the Applicant's Representative.

Decision

8. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

"Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be 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.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.”

9. 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.”

10. I considered the application in terms of Rule 66 of the Procedural Rules. That Rule provides:

'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; and

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

11. After consideration of the terms of the application and the various documents produced, I consider that the application should be rejected on the basis that that it would not be appropriate to accept the application under Rule 8 (1) (c). The application should be rejected under Rules 5 & 66 (b) (i)(ii)(iii).

Reasons for Decision

12. The Tribunal must have regard to the mandatory requirements contained in Procedural Rules 5, 8 & 66. The application form itself therefore *must* be accompanied by (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.

13. This application was made under Rule 66 of the Procedural Rules and it purported to relate to a Short Assured Tenancy under the Housing (Scotland) Act 1988. A full copy tenancy agreement was not produced. The documents produced originally, pages 23 & 24 appeared to be from a Scottish Private Residential Tenancy dated 17 May 2019 as the words 'Private residential tenancies' appeared below the signing date of 17 May 2019. Any tenancy after 1

December 2017 (PRT) should come under the Private Housing (Tenancies) (Scotland) Act 2016. Even if the Applicant says it is not, a full copy of the tenancy agreement has not been produced or if this is not available, as much information about the tenancy as the landlord can give.

14. The notice given to the tenant under section 33(1)(d) of the 1988 Act is not produced. The Notice to Quit, referred to in the Execution of service by Sheriff Officers, is not produced. The notice given to the tenant under section 33(1)(d) of the 1988 Act is irrelevant, if it is in fact a PRT as it appears to be.
15. The copy Section 11 Notice under the Homelessness etc. (Scotland) Act 2003 Notice by Landlord of proceedings for possession did not state in it a Local Authority, did not state the Court or Tribunal in which the Proceedings might subsequently be raised and did not specify the legislation under which proceedings are being notified. It is flawed.
16. Accordingly, for these reasons, this application must be rejected upon the basis that that application does not contain the mandatory information needed to satisfy the requirements in Rules 5,8 & 66 of the Procedural Rules and principally, that it would not be appropriate to accept the application under Rule 8.
17. This Decision does not preclude the Applicant submitting a fresh application under the correct Rule of the Procedural Rules and with the required information and documentation in the correct manner.

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.

Susan Christie

Susan Christie
Legal Member
29 January 2020