



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

**Under Rule 8 (a) and (c) of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.**

In respect of application by Mr David Allen in terms of rule 66 of the Rules.

**Case reference FTS/HPC/EV/22/0282**

At Glasgow on the 38 April 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 Mr David Allen in terms of rule 66 of the Rules for recovery of possession of the property at 1/1 58 Motehill Road Paisley PA3 4 SS. The application was made on his behalf by Mr Ian Troy of Penny Lane Homes
2. The application is dated 28 January 2022 and was received by the tribunal on 2 February 2022.
3. The application was accompanied by the following:-
  1. Tenancy agreement.
  2. Notice to quit.
  3. S33 notice.
  4. Tenancy agreement.
  5. AT5.
  6. S11 notice.
4. The tribunal wrote to the applicant's representative on 18 February 2022 requesting further information as follows:

1. Please provide written authorisation from the applicant(s) that the representative is instructed to act for them in this matter.
2. Please provide landlord registration details.
3. Please provide evidence of service for notice to quit.
4. Please provide evidence of service for the section 33 notice
5. Please provide evidence of service the section 11 notice
6. The tenancy agreement appears to indicate that the term of the tenancy is 6 monthly, and ends on 10 February and 10 August. It does not appear that 10 December is an ish (end) date. It does not therefore appear that the notice to quit is valid. Please provide your comments on the validity of the notice to quit explaining in what way you consider it to be a valid notice.
7. Please provide a copy of the AT5 Form which requires to have been given to the tenant prior to the creation of the tenancy in order to create a short assured tenancy
8. Please note that section 33 applications are now discretionary and the applicant is obliged to satisfy the tribunal that it would be reasonable to grant the order for eviction. Please provide information as to why it would be reasonable to grant an order for eviction in this case.
9. The title deeds show that the property is jointly owned by Thomas David Allen and Jacqueline Sarah Allen; please advise if Jacqueline Sarah Allen is to be a joint applicant in this case, and if so please amend the application. If the application is to be brought in the sole name of Thomas David Allen, please have Jacqueline Sarah Allen provide their written confirmation that they consent to these proceedings being raised in the sole name of Thomas David Allen.

5. The applicant's representative did not reply. A reminder was sent by the tribunal on 31 March 2022. No further information has been received.
6. This application is incomplete as there is no evidence of service of the notice to quit and s33 notice and there is no evidence of service of the s11 notice. There is however an AT5 with the tenancy agreement which may have been missed by the inhouse convenor. The applicant's representatives have failed to deal with the reasonable request by the tribunal for further information. They have also failed to provide a mandate authorising them to act.
7. There is also a fundamental problems with this application relating to the notice to quit. As identified by the inhouse convenor, the notice to quit does not tie in with the ish date. The tenancy agreement was for the initial term of 6 months from 10 August 2007 until 10 February 2008. The agreement specifically states that the lease is for a fixed term and there is no provision for the agreement to continue for month to month after the expiry of the initial period. This means that the ish date is either 10 February or 10 August each year and 10 December 2021 given in the notice to quit is not an ish date. In any event the applicant's representative have failed to answer the query regarding the notice to quit or provide any other notice to quit issued. If the notice to quit is invalid the tenancy agreement has not been brought to an end and any application in terms of s33 of the Housing (Scotland) Act 1988 must fail.

8. 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”.
  
9. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. 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 as at best, it is incomplete. The essential information required has not been provided despite requests made on 18 February 2022 and 31 March 2022.

**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