



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 Miss Carole Donnelly of Struan Baptie Property Management, ostensibly on behalf of Mr Thomas Jamieson and Mrs Moira Jamieson in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/0395

At Glasgow on the 19 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 Miss Carole Donnelly of Struan Baptie Property Management, ostensibly on behalf of Mr Thomas Jamieson and Mrs Moira Jamieson, the joint owners of the property at 110 Dudhope Street Dundee DD1 1JS to recover possession of the property on the expiry of a short assured tenancy, in terms of Rule 66 of the Rules.
2. The application was dated 8 February 2022 and received by the tribunal on 11 February 2022. There was a second application (FTS/HPC/CV/22/0396) in respect of rent arrears.
3. The application was accompanied by the following:-
 1. Tenancy agreement for let of the property from 2 February 2016 to 3 August 2016 and month to month thereafter.
 2. Notice to quit dated 19 April 2021.
 3. S33 notice dated 19 April 2021.
 4. AT5.
 5. S11 notice.

4. The application was not complete and fundamentally Stuart Baptie Property Management had not provided proof that they were instructed by the landlords in the two applications. The tribunal wrote to Start Baptie Property Management on 4 March 2022 as follows:

In order for the Tribunal to be able to process your application further please provide the undernoted information /documentation:

1. *For both applications please provide a proper address for the Applicants and not a c/o address.*
2. *For both applications please provide authorisation for the agent as the authorisation provided relates to issuing a notice, not to representing the Applicants in a Tribunal process.*

3. *For EV/22/0395: a) Please address the following issue:*

a) The Notice to Quit is issued to 10 August 2021, which does not appear to be a valid ish date of the tenancy. The tenancy submitted commenced on 1 June 2016 and in clause 1 had as its initial period 1 June 2016 to 30 November 2016 and states it will run thereafter from month to month. Please explain why you consider that the Tribunal can find this to be a valid end date for the Notice to Quit. Please note that a valid Notice to Quit will be required if you wish to proceed on the basis of s 33 of the Housing (Scotland) Act 1988 and Rule 66.

b) No evidence of service of the S 33 notice and the Notice to Quit was provided. Please provide this now.

c) The S 11 Notice refers to proceedings under the Housing (Scotland) Act 2001. The application is made in terms of S 33 of the Housing (Scotland) Act 1988. Please provide a correct S 11 Notice and proof of service.

4. *For CV/22/0396:*

a) The application in part 5 c does not provide the amount of payment the Applicants are seeking. This must be included to provide fair notice to the Respondent. If the sum changes the Applicant is referred to the provisions in rules 13-14A of the Rules of Procedure, which deal with amendment of applications and can be found through the Tribunal's website.

Please reply to this office with the necessary information by 18 March 2022. If we do not hear from you within this time, the President may decide to reject the application.

5. No substantive response has been received in relation to either application. Ms Donnelly wrote on 1 March 2022 with a rent statement and nothing else. Fundamentally the Stuart Baptie Property Management have failed to show that they are instructed in these matters.
6. The tribunal sent a further reminder on 18 March 2022 requesting the outstanding information by 1 April 2022. No response has been received.
7. This application cannot proceed if the agents presenting the application cannot show they are instructed. Further, there is a serious problem with the eviction application as the notice to quit does not tie in with the ish date and

may therefore be invalid. No proof of service of the notice to quit and s33 notice has been lodged and the s11 notice is incorrect.

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. The essential information has not been provided despite two reasonable requests. 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 the agents have failed to establish that they are instructed in these matters.

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