



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 Mr Adnan Alshoufi in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/3633

At Glasgow on the 9 January 2023, 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 Adnan Alshoufi the owner and registered landlord of the property at 1/1 20 Bulldale Place Yoker Glasgow G14 ONE, ‘the property’, for recovery of possession of the property in terms of Rule 66.
2. The application was dated 6 October 2022 and received by the tribunal on that date.
3. The application was incomplete and the Tribunal wrote to the applicant on 3 November 2022 as follows:
 - Please provide a copy of the signed tenancy agreement and Form AT5
 - Please provide a copy of the Notice to Quit served on the tenants together with proof of service of same
 - Please provide proof of service of the s33 Notice on the tenants
 - Please provide evidence of service of the s11 notice on the local authority.
4. The Applicant responded on 14 November 2022 by sending a copy of two tenancy agreements. The first was dated 1 July 2010 and was in the sole name of the Respondent Joanna Ziolkowska. The second was dated 1 July 2021 and was in the joint names of both Respondents. Both purported to be short assorted tenancy agreements. The Applicant also submitted a s33 notice dated 7 September 2022 which was sent by email. The notice was dated 7 September 2022 and stated that the Respondents were required to leave the property by 7 December 2022. He also submitted a document which appeared to be a notice to quit however the document did not contain the

required information. It was dated 2 April 2022 and stated that the Respondents require to leave by 30 June 2022. He also submitted an AT5 in respect of the tenant Joanna Ziolkowska only, dated 30 May 2010.

5. The application was reviewed again by the inhouse convenor and the following letter was sent on 9 December 2022. (The letter erroneously referred to the Applicant's email being received on 2 November 2022 when it was in fact received on 14 November 2022):

The Tribunal acknowledges receipt of your email of 2 November 2022 in response to its request for further information. Your response has been reviewed by a legal member of the tribunal. You have provided copies of two tenancy agreements, one dated 30 May 2010 in which only Joanna Ziolkowska is named as the tenant and another dated 20 June 2021 in which both Joanna Ziolkowska and Teresa Ziolkowska are named as tenants. Both agreements, including the later one, bear to be short assured tenancy agreements. As you may be aware this type of tenancy was abolished on 1 December 2017. Since that date the private residential tenancy has been in place and there is a model form of tenancy agreement available on the Scottish Government website. Please explain why you believe a tenancy agreement which was created on 20 June 2021 can be a short assured tenancy and does not fall to be treated as a private residential tenancy? The Notice to Quit appears to be an email sent on 2 April 2022. Your attention is drawn to the requirements of the Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988 and you are invited to consider whether the notice to quit which you claim to have served on the tenants meets the requirements of those regulations. In the notice to quit which has been provided, it is indicated that the tenant requires to quit the premises by 30 June 2022. Does the notice to quit specify a removal date which is an "ish" or end date of the tenancy? If not on what basis is the purported notice effective and valid in law. Please provide proof of the method of service of the relevant Notices (Notice to Quit and section 33 notices) on each of the joint tenants individually or explain why what appears to be service of one single version of each notice addressed to both parties constitutes valid notice to each individual joint tenant? You have indicated that you sent the notice to quit by email and WhatsApp to the tenant. In order for that form of delivery to be lawful service it would require to comply with the provisions contained in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010. In terms of that Act, service of documents and notices by electronic communications is only permissible where the person on whom the document is being served has agreed, prior to the document being served, that it may be served in this manner and that it may be sent to an electronic address and in an electronic form specified by the person for the purpose. Please provide evidence that you agreed with your tenant in advance of the service of the notice by electronic means such as email that your tenant was willing to receive notices by electronic communications and the evidence of the electronic address and the electronic form specified by the tenants for that purpose. Upon receipt of the above information, a final decision can then be taken on whether your eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. Please respond to this letter within the next 14 days. You should be aware that the Tribunal has the power to reject applications on 2 grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The tribunal would respectfully suggest that the applicant may wish to seek independent legal advice on this matter.

6. The applicant responded on 20 December 2022 by sending a copies of further tenancy agreements between the parties for a period of 12 months commencing on 1 July 2011, 2012, 2013, 2014, 2015, 2016 and 2019. He also submitted an AT5 dated 20 June 2021. The applicant did not address the remaining issues set out in the Tribunal's letter of 9 December 2022.

7. There are a number of difficulties with this application which have led me to reject it. As things stand and taking the information provided by the Applicant at its highest level, I am prepared to accept that an assured tenancy agreement has been constituted. It appears that a new agreement has been entered into every year and if the terms and conditions are the same, it is arguable that an assured tenancy is in force. It is also probable that the Applicant may be able to produce an AT5 in respect of both tenants to satisfy the Tribunal that a short assured tenancy agreement has been constituted. The AT5 from 2010 is only in respect of one tenant. The only other AT5 produced is dated 2021. There may be further AT5's which have not yet been produced.
8. There is however a fundamental problem with the application that is incapable of resolution. The Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988 sets out the legal requirements of a notice to quit. The notice here does not comply with those requirements. Further, the notice to quit does not tie in with the ish date of 1 July as the date given is 30 June. Thirdly, the notice to quit appears to have been served by email and the Applicant has failed to provide any evidence that this method of service was agreed with the Respondents. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides for service of documents. Service of notices by electronic communications is only permissible where the person on whom the document is being served has agreed, prior to the document being served, that it may be served in this manner. Fourthly, the Applicant appears to have served the notice to quit on both respondents collectively rather than individually. Assuming for the moment that a short assured tenancy has been constituted, the notice to quit is invalid and the tenancy agreement has not been brought to an end. An application in terms of rule 66 on the expiry of a short assured tenancy cannot therefore succeed.
9. 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”*.
10. 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.
11. In accordance with the overriding objective I am rejecting this application for the foregoing reasons.

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