



**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/22/3046

**Parties**

**Mr Christopher McKenna (Applicant)**

**Miss Claire Mackie (Respondent)**

**19 Broomlands Drive, Irvine, KA12 0DT (House)**

1. On 25 August 2022 the First-tier Tribunal Housing and Property Chamber (FTT) received an application for an order for possession for the property dated 19 August 2022. The Applicant stated the application was made under Rule 66 of the Procedural Rules, being an application for order for possession upon termination of a short assured tenancy in terms of S33 of The Housing (Scotland) Act 1988 (the Act).
2. The application was accompanied by a Notice to Leave in terms of the Private Housing (Tenancies) (Scotland) Act 2016 dated 3 June 2022, a blank S 33 notice, tenancy agreement commencing 6 August 2012 headed Short Assured Tenancy over the

property, and the first page of what could be a AT5 notice dated 31 July 2012.

3. On 28 September 2022 the FTT wrote to the Applicant in the following terms: 1. You have submitted a notice to leave. This is not a valid notice for applications relating to assured and short assured tenancies. Please submit a Notice to Quit with evidence of service on the Respondent. This is required for applications under Rule 66. If you have not served a Notice to quit, please confirm if you wish to withdraw the application and re-submit it once a valid notice has been served. 2. If the application is to proceed, please provide (a) A copy of the whole AT5. The document lodged is incomplete. (b) A copy of the section 11 notice sent to the Local Authority, with evidence of service. (c) Evidence of service of the section 33 notice. (d) Evidence of landlord registration. You may wish to take legal advice before you respond
4. On 3 October 2022 the Applicant replied in the following terms: I saved a Notice to Quit and a Notice to Leave. I have also served a section 11 notice to the Local authority. (all attached) As for Legal advice I cannot afford this. I was quoted between £3000 - £5000. I first told my tenant that I was selling the flat on January 6th and gave her 6 months notice as well as the local authority. I am in severe financial difficulty right now and I am selling the property to help alleviate this. I have a family to support including 2 children aged 11 and 9. The tenant is happy to leave the property it is the LA who are advising her not to leave as they have no housing for her, They have advised her that if she leave she is making herself homeless. I believe they are manipulating her and not giving her the full advice she is entitled to. Please call me if you can on 07828227039. I am only a landlord by default. I had to rent a house in 2012 for my family as my flat would not sell in 2012. there must be some free legal help out there for people like me.
5. He attached to the email a S 11 Notice and a partially completed S 33 Notice, which did not state the date on which vacant possession was required. The S 33 Notice did state the tenant had to remove from the property on or before 6 August 2022. The S 33 Notice was dated 3 June 2022.
6. The documents and correspondence in the application file are referred to for their terms and held to be incorporated herein.

## **DECISION**

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."*

After consideration of the application, the attachments and correspondence from the Applicant, the Tribunal considers 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**

### **Relevant Rules of Procedure:**

#### **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;

(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

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

1. S 32 (2) (b) of the Housing (Scotland) Act 1988 requires for the creation of a Short Assured Tenancy that a notice in form of Form AT5 “is served before the creation of the assured tenancy”. It is not clear if a full AT5 document was served on the tenant prior to the commencement of the tenancy because the document lodged is only the first page of the AT5 document.
2. S 33 (1) of the Housing (Scotland) Act 1988 sets out the requirements on which an order for possession can be made. It requires the short assured tenancy to have reached its finish and tacit relocation not to be operating.
3. The Applicant has not provided a Notice to Quit to the Respondent. What the Appellant has provided is a Notice to Leave dated 3 June 2022, which states as the ground on which the notice is based ground 1 “Your landlord intends to sell the Let Property”. Ground 1 referred to is ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). This is not one of the grounds stated in schedule 5 of the Housing (Scotland) Act 1988 (the 1988 Act) which is the legislation under which the tenancy was granted. A Private Residential Tenancy for which termination by a Notice to Leave in terms of S 62 of the 2016 Act is appropriate is defined in schedule 1 of the 2016 Act and a Short Assured or Assured Tenancy in terms of the 1988 Act is not a Private Residential Tenancy. There is nothing to suggest that the tenancy was ever formally changed from being an Assured Tenancy in terms of the 1988 Act to a tenancy under the 2016 Act. The application also clearly refers to

the applicable rule being rule 66 and thus relating to a tenancy under the 1988 Act. A Notice to Leave in the format of the 2016 Act is not a valid Notice to Quit for a tenancy under the 1988 Act and the Notice does not provide the information necessary for a valid Notice to Quit as stated in the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Thus the Notice to Leave has not terminated the contractual Assured Tenancy. Therefore the lodging requirement in terms of s 66 (b) (iv) is also not met as there is no valid Notice to Quit.

4. As the lodging requirements for an application under Rule 66 of the Rules of Procedure and requirements under S 32 of the Housing (Scotland) Act 1988 are not met it would not be appropriate for the FTT to accept the application.
5. The application is rejected.
6. The Applicant stated that he is unable to source paid for legal advice. The FTT as a judicial body cannot provide legal advice. However, links to relevant advice bodies are provided in the Useful Links tab of the website of the Housing and Property Chamber.

#### **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.**

**Petra Hennig McFatridge**

**Legal Member**

**26 October 2022**