



**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/22/2068

**Parties**

**Mrs Justine Cochrane (Applicant)**

**Miss Natalie Stewart (Respondent)**

**4 Auchrannie Terrace, Dundee, DD4 7QN (House)**

1. On 28 June 2022 the First –tier Tribunal Housing and Property Chamber (FTT) received an application for an order for possession for the property. 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 Quit dated 22 December 2021, a S 33 notice of the same date, tenancy agreement over the property, an AT5 notice dated and signed for 24 March 2017 and a S 11 notice to the local authority.

3. The tenancy agreement submitted shows as the tenancy period in clause 2 a start date of 21 March 2017 and as the end date 20 March 2018 and provides for continuation monthly thereafter until termination by either two months written notice from the tenant or notice with a notice period as the statutory provisions from time to time require by the landlord. The Notice to Quit submitted shows as the termination date 24 June 2022. The S 33 notice shows as the date on which possession is required 24 June 2022.
4. 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”.

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 provided a form AT5 which is dated and accepted 24 March 2017. The tenancy commenced, as per clause 2 of the submitted tenancy agreement, on 21 March 2017, which is 3 days prior to the date of the AT5 form. Thus the AT5 form, which was clearly issued and accepted on 24 March 2017, was not served on the tenant prior to the creation of the assured tenancy, which commenced on 21 March 2017. The tenancy is thus not a short assured tenancy and thus an application under rule 66, which solely relates to applications in regard to Short Assured Tenancies, would not be the correct application type.
4. The lodging requirement of rule 66 (b) (ii) of the Procedural Rules is not met as there is no valid notice by the landlord that the tenancy is a short assured tenancy.
5. The Applicant has provided a Notice to Quit to the Respondent which the FTT considers to be invalid. The ish date of the tenancy in terms of the provisions of the tenancy agreement clause 2 is clearly the 20th day of the month. The Notice to Quit states as the date to quit the property 24 June 2022, which does not coincide with an ish date of the tenancy. It is not clear how the Respondent would have been able to identify the notice as a clear and unambiguous notice to quit terminating the tenancy agreement to a specific date and preventing tacit relocation from a specific date as the Notice to Quit did not seek to terminate the tenancy to a valid ish date. Therefore the lodging requirement in terms of s 66 (b) (iv) is also not met as there is no valid Notice to Quit.
6. 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.
7. The application is rejected.

### **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  
21 July 2022