



**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/21/2050

Parties

Mr Mohammed Arshad (Applicant)

Mr Atif Aziz Khawaja, Mrs Samina Aziz Khawaja (Respondent)

AQA Property Limited (Applicant's Representative)

36 Garturk Street, Flat 0/2, Glasgow, G42 8JF (the property)

1. On 23 August 2021 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 not accompanied by any documents.
3. By letter of 6 September 2021 the FTT in terms of Rule 5 (3) of the Procedure Rules requested further information to be provide as the application in the form presented did not meet the lodging requirements of an application under Rule 66. The FTT

requested by various documents, including the S 11 notice to the local authority, by 20 September 2021.

4. In reply on 8 September 2021 the Applicant's representatives provided a copy of the lease, the AT5 document, the AT6 document, the Notice to Quit and the S 33 document but not the S 11 notice to the local authority and no evidence of service of the notice, AT6 and S 33 documents. The Notice to Quit and S 33 documents were dated 6 October 2020 and gave as the date of removing 9 April 2021.
5. By letter dated 24 September 2021 the FTT again wrote again requesting the S 11 notice, proof of service of the documents and raised with the Applicant the issue of the validity of the Notice to Quit, as this stated the date for vacating the property as 9 April 2021 whereas the lease was described as initially as 2 October 2016 and thereafter from month to month in clause 2 of the tenancy agreement. The FTT asked for written representations as to how this should be considered valid by 8 October 2021.
6. The Applicant then in reply re-submitted some of the previously provided documents but did not address the issues raised in the FTT letter of 24 September 2021.
7. The application was thereafter rejected and after permission to appeal was applied for by the Applicant the decision was reviewed by the legal member who had rejected the application initially and further directions were issued to the Applicant on 12 November 2021 requesting again the same information as before.
8. The Applicant did not reply.
9. On 5 January 2022 the FTT again wrote to the Applicant in the following terms: " Good afternoon. Please provide the information requested in the Tribunal's Direction to you sent by email on 12 November 2021. Please provide the information requested within 14 days (19/1/2022) failing which your application will be refused"
10. No further reply was received to date. At no point was a copy of the S 11 notice to the local authority provided to the FTT despite this having been listed as a document to be provided when the application was made and despite the Applicant having lodged a copy of the email allegedly sending such a notice to Glasgow City Council.
11. 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. The Applicant had been given ample notice by the Tribunal of the issues identified regarding missing information and the lack of documents to fulfill the lodging requirements.
2. The application at present does not meet the lodging requirements for an application under Rule 66, which is the Rule stated in the application, as it was not accompanied by the S 11 document required under Rule 66 (b) (v) of the Rules of Procedure as stated above.
3. The missing notice to the local authority means that the lodging requirements required for an application of this nature are not met.
4. The Applicant has provided a Notice to Quit to the Respondent but to date, although this had been queried several times in correspondence and the matter has been appropriately intimated as a problem for the application by the FTT to the Applicant, he has not seen fit to make representations which would allow the matter to be

further considered. In the absence of any such representations the FTT also considers that no valid Notice to Quit has been issued. The Notice to Quit states as the date to quit the property 9 April 2021, which does not coincide with an ish date of the tenancy. The Applicant was obviously aware that this was an issue even on the date the application was raised as he stated in the email of 23 August 2021:” The “ish” end date of the tenancy is 04/04/2021 and not 09/04/2021 as stated in our previous application.” Although this is again incorrect, it shows that the Applicant himself had identified that there was a problem with the date stated on the notice. He did not address this matter despite directions to do so. The ish date of the tenancy in terms of the provisions of the tenancy agreement clause 2 is clearly the second day of the month, not the fourth and not the ninth. It is not clear how the tenant and 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. Therefore the lodging requirement in terms of s 66 (b) (iv) is also not met as there is no valid Notice to Quit. As the lodging requirements for an application under Rule 66 of the Rules of Procedure and S 33 Notice of the Act are not met, it would not be appropriate for the FTT to accept the application.

5. The Applicant was left in no doubt in the correspondence of 5 January 2022 that if the necessary additional documentation and information was not provided the application would be rejected. He did not reply and did not forward the requested documentation and representations.
6. 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
9 February 2022