



**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/22/3609

Parties

Mrs Margaret Greig (Applicant)

Mr Robert Littler (Respondent)

Westgate (Applicant's Representative)

Flat 2, 4 North Bank St, Clydebank, G81 1NT (House)

1. On 4.10.2022 the First –tier Tribunal Housing and Property Chamber (FTT) received an application for an order for recovery of possession for the property dated 23.9.2022. The Applicant's agent 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 with cover letter and a S 33 notice, both dated 24.11.2021 and also included the tenancy agreement, an AT6 notice, a S 11 notice and email sending same. The proof of posting and delivery for the cover letter, Notice to Quit and S 33 notice shows the date of sending recorded delivery as 25.11.2021 and the date of receipt as 26.11.2021. The Notice to Quit cover letter states as the date for removing 27.5.2022, the S 33 notice states the same date. The tenancy agreement in clause 4 Term states that the initial term is from 21 August 2014 to 21 February 2015 and continues thereafter "on a month to month basis from 21 February 2015 until the TWENTY-FIRST day of each successive month (the repeat "ish" until formal termination in accordance with clause 6".
3. The documents 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 has not provided a valid Notice to Quit. The Notice to Quit document itself does not actually contain a date by which the Tenant is required to quit the

property. Even if one was to read the Notice to Quit document together with the cover letter, the date stated as the date when the tenancy is to end is 27.5.2022. Clause 4 of the tenancy agreement contains very clear information about the ish date of the tenancy. It is the 21st day of each month. 27.5.2022 is clearly not an ish date of the tenancy and thus the Notice to Quit has not validly terminated the tenancy to an ish date. The Notice to Quit is not a valid notice to quit. Thus I find that the application was not accompanied by a valid Notice to Quit and does not meet the lodging requirement of rule 66 (b) (iv).

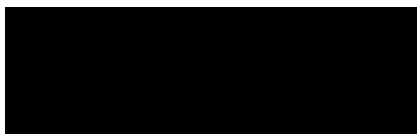
2. Although the list of documents stated on the application contains an AT5 document, this was not provided. Thus the application does not comply with the lodging requirement stated in rule 66 (b) (ii).
3. As the lodging requirements for an application under Rule 66 of the Rules of Procedure are not met, it would not be appropriate for the FTT to accept the application. 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
26 October 2022