



**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/23/2996

Parties

Mr Ken Axford (Applicant)

Mr Bruce George Clark (Respondent)

Direct Lettings (Applicant's Representative)

3rd Floor, 28 Abernethy Road, Dundee, DD5 2PF (House)

1. On 30.8.2023 the First –tier Tribunal Housing and Property Chamber (FTT) received an application for an order for recovery of possession for the property. 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 the following documents: Tenancy agreement, S 33 notice, notice to quit, sheriff officers' service of same, a S 11 notice and email

sending same. The Notice to Quit states the tenant has to quit the property on 27.8.2023, the S 33 documents both states vacant possession is required as at 27.8.2023. The application also included a rent statement, a notes report from the Letting Agent and confirmation of the intention of the applicant to sell the property. The tenancy agreement in clause 2 states that the initial term is from 28.10.2010 to 27.10.2011 and contains no provision for the tenancy to continue thereafter for any specific period. No AT5 document was enclosed.

3. On 15.9.2023 the FTT wrote to the applicant requesting further information and raising in particular the issue of the validity of the Notice to Quit being apparently not to an ish date and the absence of an AT5 document. The letter requested a reply by 29.9.2023. No reply has been received.
4. 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.

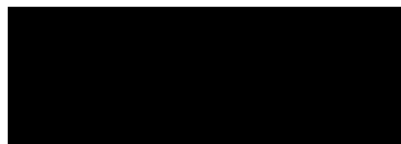
1. The applicant has not provided a valid Notice to Quit. The S 33 document and Notice to Quit documents provided both specify as the date when the landlord requires the property to be vacated 27.8.2023. The initial ish date of the tenancy in terms of clause 2 was 27.10.2011. There was no provision that the tenancy would continue thereafter month to month and thus tacit relocation applies. Given the term of the tenancy agreement 27.8.2023 is not a valid 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.



**Legal Member
30 October 2023**