



**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/23/3011

Parties

Mr Alan MacGregor (Applicant)

Ms Fiona Florence (Respondent)

Blair & Bryden Solicitors & Estate Agents (Applicant's Representative)

2 Finch Drive, Knightswood, Glasgow, G13 4QJ (House)

1. On 31.8.23 the First-tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 66 of the Procedure Rules from the Applicant. The application was accompanied by a Tenancy Agreement commencing 27.8.14 stating in clause 3 that it will continue for 3 years and thereafter on a two monthly basis. Attached were a S 11 notice and proof of service, a S 33 Notice dated 23.5.23 and stating as the date for removing 30.8.23, an AT5 notice and a Notice to Quit to 30.8.23 dated 23.5.23. The recorded delivery documentation for the notices was submitted.

2. On 19.9.23 the FTT wrote as follows: It appears that the Notice to Quit was not issued to an ish date of the tenancy. The tenancy seems to have continued from the initial ish date of 27 August 2017 bi-monthly as set out in clause 3 of the tenancy agreement. The 30th day of August thus does not appear to be a valid ish day and the Notice to Quit thus appears not to be valid. Please make legal representations on the matter.
3. On 20.9.23 the applicant's agent replied stating they thought a 2 months notice period was require. On 22.9.23 the agent sent a mandate and asked if they had to re-issue the Notice to Quit. On 28.9.23 the agent produced a Notice to Quit, dated again 23.5.23 but on this document stating 27.8.23 rather than 30.8.23 as the relevant date.
4. On 3 occasions in October 23 the FTT enquired whether this second Notice to Quit was sent to the tenant and asked for an explanation as to why there were two Notice to Quit documents dated the same day but giving different end dates.
5. On 14.11.23 the agent replied: Despite my efforts to attempt to clarify this situation both by telephone and email we appear to be no further forward. There also appeared to be an issue with you receiving emails a few weeks ago as my emails could not be delivered. The only Notice to Quit served on the tenant is the one with the wrong "ish" date. I asked several times if I had to re-issue the original Notice to Quit to the tenant either with the amended date or re-issue with a new date entirely but I could not have this information verified by your office. The Notice to Quit sent to you on 28th September was drafted at this office on that date by amending the original date. It was not sent to the tenant. I would be grateful if you could please let me know if the Notice to Quit sent to you on 28 September 2023 is null and void and therefore the application is rejected. I must also stress again that the tenant needs the eviction notice in order to secure another property through Glasgow Council.
6. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

- 8. After consideration of the application, the attachments and correspondence from the Applicant, I consider 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

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; and

(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

and

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

1. The decision is made on the basis that the application was made under rule 66. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application and actually sent to the Respondent requires the tenants to quit the premises on 30.8.23. The tenancy agreement shows as the relevant date the 27th day of any month of the year. The Notice to Quit must be to an exact date. A request for submissions was issued and in reply an amended notice, which had not been sent to the tenant, was provided to the FTT. The agent states that they had enquired with the Tribunal if they needed to re-issue the notice. The Tribunal is not able to provide parties with legal advice. The agent is a Letting Agent providing professional services and advice to clients in the matter of the letting out of residential properties and should be aware of the relevant legal provisions.
2. I consider that the application is not accompanied by a valid Notice to Quit as required in Rule 66 (b) (iv) of the Procedural Rules. The Notice to Quit was not to an exact date and thus invalid. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
3. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit. The lodging requirements for such an application have not been met. The application in terms of rule 66 is thus 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.



1 December 2023