



**DECISION AND STATEMENT OF REASONS OF JAN TODD, 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/23/2253

Parties

RGC Properties Limited (Applicant)

Mr William Malone (Respondent)

Knights Estate Agents (Applicant's Representative)

6 Niddrie Road 1/3, Glasgow, G42 8NS (House)

1. On 6th July 2023, an application was received from the Applicant. The Application was made originally under Rule 65 of the Procedural Rules, but later amended to an application under Rule 66 being an application for eviction in relation to a possession on termination of tenancy in terms of S33 of the Housing (Scotland) Act 1988. (the 1988 Act) The following documents were enclosed with the application:-
 - Copy Assured Tenancy Agreement between the parties with a start date of 4th June 2014 and an end date of 3rd December 2014
 - Copy Notice to Quit dated 10th November 2022 giving notice to Quit by

7th June 2023

- S33 notice dated 10th November 2022 giving notice to leave by 7th June 2023
- Proof of posting dated 10th November 2022

2. The Tribunal wrote to the Applicant on 7th August 2023 saying;-

"I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:

The Notice to Quit appears to be invalid as the date specified does not coincide with an ish date. Please either withdraw the application or clarify the basis upon which the application can proceed. If the application is to proceed please provide

- 1. An amended application form. You have specified Rule 65 and ground 10. However, ground 10 applies when a tenant has given a Notice to Quit to the landlord. If you are relying on section 33 the application should specify that and be based on Rule 66.*

- 2. A track and trace report or other evidence that the notices were delivered.*

- 3. If the lease document is incomplete, the remainder of the tenancy agreement.*

- 4. The AT5 notice issued to the tenants before the lease was signed.*

- 5. Confirmation that the correct postcode is G42 8NS Please reply to this office with the necessary information by 21 August 2023. If we do not hear from you within this time, the President may decide to reject the application."*

3. The Applicant responded by e-mail dated 21st August asking for an extension of time to reply. This was granted and allowed until 15th September 2023 to respond. There was no response by that date and a further email was sent to the Applicant stating:

"I refer to your recent application which has been referred to the Chamber President for consideration. It is noted that you were sent a previous request for information (copy attached) and that you applied for an extension to provide this information to the Tribunal. This was granted until 15 September 2023 but the requested information has still not been received. Please reply to this office with the necessary information by 17 October 2023. If we do not hear from you

within this time, the President may decide to reject the application. “

4. A further extension of time was sought by the Applicant's representative this time due to the fact she advised the tenant may have bene moving out but had not in fact moved so the application was still necessary. A final extension was granted for a response not later than 27th October 2023. The Applicant replied on 26th October 2023 and referred to attached documents which contained a revised page of the application from stating she was relying on Rule 66 and section 33 and advising the landlord intended to sell the property after the eviction; a further copy of a short assured tenancy agreement dated from 4th June 2009 until 3rd June 2009 between the same parties; a form At5 dated 4th June 2009 and a track and trace receipt showing items delivered on 11th November 2023.
5. A further request was sent to the Applicant's representative on 16th November 2023 stating
“I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: 1. Please provide your comments on the validity of the Notice to Quit as it does not coincide with an “ish” date of the lease.”
6. The Applicant's representative responded on 22nd November stating *“Good afternoon Further to your recent email. I respond to the question asked: 1. 1. Please provide your comments on the validity of the Notice to Quit as it does not coincide with an “ish” date of the lease. The lease ended on 3rd June and I added on extra time for delivery, I now realise that this is incorrect but as the notice was served over 1 year ago I hope that the Tribunal will not reject this application on this occasion.”*
7. The issue that appears to the Tribunal to be fundamental and fatal to this application is the question of the date specified in the Notice to Quit which is not an ish date of the tenancy. The Applicant's representative acknowledges that she has not referred to an ish date explaining that she has allowed time for service but asks for the application to be considered anyway.

DECISION

8. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

9.

"Rejection of application

Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47, to 50, 55, 59, 61, 65, to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111 as appropriate.

(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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."

10. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (a) and (c) of the Procedural Rules.

REASONS FOR DECISION

11. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-
"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".
It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
12. The following issues have been identified in the paperwork submitted:-The Notice to Quit does not specify a valid ish date. The Applicant has lodged two

copy tenancy agreements. In the first the term is from 4th June 2009 to 3rd June 2010 and in the second the one originally lodged with the application it is from 4th June 2014 to 3rd December 2014. In the first tenancy agreement it is for an initial period of one year and in the second the period is for 6 months and in neither does there appear to be any provision for it to continue on a monthly basis thereafter. In the absence of any provision in Tenancy Agreement to the contrary it is assumed tacit relocation is in operation. This means the ish date is 3rd December and 3rd June in each year and the Applicant having given a Notice to Quit with an ish date of 7th June 2023 has failed to validly terminate the contractual tenancy, the 7th being after the date on which the tenancy automatically renews if not validly terminated. The termination on a valid ish date is an essential requirement of any application relying on s33 of the Housing (Scotland) Act 1988 as the contractual tenancy has to be brought to an end.

13. S33 of the 1988 Act states in subsection 1 “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession

of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal

[may] make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(d) that the landlord (or, where there are joint landlords, any of them) has given to the

tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

It is a fundamental and well established rule of property law that a notice to quit must be served referring to a valid ish date and if it fails to do so it is invalid and does not operate to stop tacit relocation. Given the notice to quit in this application is not valid and does not terminate the tenancy and stop tacit relocation it does not meet the requirements of s33 and must be rejected. The Tribunal if it went to a hearing would have no discretion to accept an invalid Notice to Quit.

For this reason and after consideration of the application, the attachments and correspondence from the Applicant the Legal Member considers that the Application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1) (a) and Rule 8(1) (c) of the Rules.

14. Accordingly, for this reason, this application must be rejected upon the basis

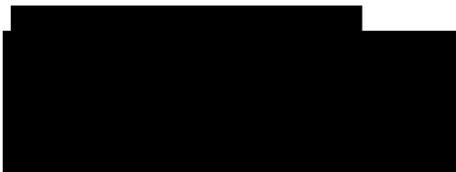
that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(a) and (c) of the Procedural Rules.

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.



Jan Todd
Legal Member
19th December 2023