



**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/23/3578

Parties

Helping Hand Trust (Applicant)

Mrs Sandra Boyle, Mr Brian Boyle (Respondent)

68 Sorn Road, Auchineck, East Ayrshire, KA18 2HP (House)

1. On 10.10.23 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 16.5.13 with no initial term stated, an AT5 document dated 16.5.13, a Notice to Quit document dated 8.6.23 to the end date of 16.8.23, a S 33 notice dated 8.6.23 to 17.8.23, a S 11 notice to the local authority and Sheriff Officers' executions of service of the S 33 and Notice to Quit documents on 13.6.23 . The Applicant stated the reason for the application was that the property was to be sold.
2. On 2.11.23 the FTT wrote to request further information in the following terms: •

Please provide your written submissions on the validity of the Notice to Quit. The tenancy agreement commenced on 16 May 2013. No termination date is specified and accordingly it is deemed to be for a year. The purported termination date does not therefore coincide with the date of the tenancy and the notice is accordingly invalid.

3. No reply was received.
4. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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

Applicable legislation: Housing (Scotland) Act 1988

32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six months; and

(b)in respect of which a notice is served as mentioned in subsection (2) below.

(2)The notice referred to in subsection (1)(b) above is one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the assured tenancy;

(c)is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

(3)Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a)it continues by tacit relocation; **F1**...

F1(b).

the continued tenancy **F2**... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4)Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy **F3**..., the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued **F4**... tenancy is not to be a short assured tenancy.

(5)Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

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; 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.

7. The applicant has failed to evidence that the tenancy was in fact a short assured tenancy. On requirement for a short assured tenancy in terms of S 32 (1) (a) of the Housing (Scotland) Act 1988 is that the tenancy is for a term of no less than six months. The tenancy agreement states no initial minimum term. The fact that it did continue for longer than 6 months as a matter of fact does not cure the lack of an initial fixed minimum period as required in S 32 during which the tenancy could not have been terminated. I consider that it does not meet the requirements of S 32 of the said Act and that thus no application under rule 66 can be made of this tenancy.
8. Even if the tenancy was to be construed as a Short Assured Tenancy with an implied initial duration of a year, rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application requires the tenants to quit the premises on 16.8.23. The tenancy agreements shows no initial term and would thus have its implied recurring ish date under tacit relocation on the yearly anniversary of the original start date of the tenancy, which would be the 16th day of May of each year. The Notice to Quit must be to an ish date. 16.8.23 is not an ish date of the tenancy. A request for submissions was issued and not answered.
9. 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 ish date and

thus invalid. The contractual tenancy continues.

10. For the reasons stated above it would not be appropriate for the Tribunal to accept the application. 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.



Legal Member

27 December 2023