



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Ruqayyah Ahmed and Sajjad Ahmed in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/23/4499

At Glasgow on the 29 May 2024 Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Ruqayyah Ahmed and Sajjad Ahmed for eviction in terms of rule 66 of the rules.
2. The application was dated 13 December 2023 and received by the Tribunal on 15 December 2023.
3. The application was accompanied by the following:-
 1. Tenancy agreement for let of the property from 1 October 2016.
 2. Notice to quit dated 21 September 2023.
 3. S33 notice dated 21 September 2023.

4. The in-house convenor reviewed the application and the Tribunal wrote to the applicants on 18 January 2024 as follows:

Before a decision can be made, we need you to provide us with the following:

Your application is for termination of a short assured tenancy by way of a notice to quit and section 33 notice. In order to proceed on this basis the Tribunal will require to be satisfied that the tenancy is in fact a short assured tenancy. A short assured tenancy is created by serving a Form AT5 on the tenant, prior to the signing of the tenancy agreement. Can you please confirm if a Form AT5 was served on the tenants and provide a copy of same if available? Please note your application will remain on hold pending your response.

We would suggest you may wish to seek independent legal advice if you have any queries regarding the status of the tenancy. If you cannot obtain advice from a solicitor there are free advice services available and you can find links to some of these under the “useful links” button on the Housing and Property Chamber website. Please reply to this office with the necessary information by 1 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicants provided the AT5 however the in-house convenor having reviewed the application in the light of this wrote to the applicants on 21 February 2024 as follows:

The AT5 submitted by you appears to be in order. However, it has been noted that the tenancy agreement does not appear to state the initial period of the Short Assured Tenancy, only that it commenced on 1 October 2016. In order to be satisfied that this is a validly constituted Short Assured Tenancy, the Tribunal requires to see evidence of the initial period of the lease (which needs to be a minimum period of 6 months in terms of the legislation). The specific date that the initial period of the lease ended (known as the “ish” date) must be known, in order that the Tribunal can be satisfied that the notices you served to end the tenancy were valid. Again, you may wish to consider seeking some advice of your own in relation to this matter, as it is a fairly complex and technical area of law.

Please respond within 14 days, in order that this application can be further considered.

6. The applicants responded on 27 February 2024 stating that the lease provides for a two month notice period and the notice to quit was issued on that basis. No substantive response has been received in relation to either application. Ms Donnelly wrote on 1 March 2022 with a rent statement and nothing else. Fundamentally the Stuart Baptie Property Management have failed to show that they are instructed in these matters.

7. The tribunal sent a further request for information to the applicants on 27 March 2024 as follows:

Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member responds as follows:

(1) Your application has been lodged under Rule 65. It appears you are proceeding with an application to terminate a short assured tenancy. Such an application should be under Rule 66. Please confirm you wish to proceed under Rule 66.

(2) You have provided a certificate of posting in respect of the Notice to Quit and Section 33 Notice. The Tribunal require to see proof of receipt such as the signed track and trace receipt.

(3) Please provide a copy of the section 11 Notice you sent to the local authority.

(4) You appear to accept that no end date was specified in the tenancy agreement. If that is the case then it would be deemed to continue from year to year and only be terminable at the year end. The date you have given in the notice to quit does not coincide with the year end date of the tenancy and accordingly it does not appear that the tenancy was validly terminated. Please let us have your comments on this point. Please provide the information requested within 14 days failing which the application may be rejected. Please reply to this office with the necessary information by 10 April 2024. If we do not hear from you within this time, the President may decide to reject the application.

8. The applicants responded on 3 April 2024 by providing the section 11 notice and proof of service of the notice to quit and section 33 notice however the issue regarding the ish date was not addressed. The Tribunal sent a further request for information on 2 May 2024 as follows:

(1) The track and trace report does not show that the Notices were delivered – only that they were posted. If the application is to proceed, you will need to demonstrate that the Respondent received the Notices.

(2) As previously advised, the Notice to quit appears to be invalid. This is because there is no agreed term in the tenancy. In those circumstances, a period of one year is usually implied. This would mean that the ish or end date would be 1 October 2017 and in the absence of any agreement to the contrary, the tenancy will have continued on a yearly basis since that date. The date specified in the notice to quit is 1 December 2023. Please clarify why you consider this notice to be valid or confirm if you wish to withdraw the application.

9. The applicants responded on 14 May 2024 to state that they intend to re-serve the notices. They asked the Tribunal to hold the application meantime failing which they wish to withdraw it.

10. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if **“they consider that an application is vexatious or frivolous”**. “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”.

11. I consider that this application is hopeless and has no reasonable prospect of success as the notice to quit is invalid. The applicants intend to re-serve the notices. They have asked the Tribunal to hold on to the application meantime, failing which they wish to withdraw it. As their most recent email is conditional and does not make it

clear they wish to withdraw, in accordance with the overriding objective I have decided to reject it. It is open to the applicants to resubmit the application once they have served the correct notices.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward

Legal Member