



**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/24/1760

**Parties**

**Mr Bartholomew Muscat, Mrs Karen Muscat (Applicant)**

**Mr Paul Kay, Lindsay Kay (Respondent)**

**Pacitti Jones (Applicant's Representative)**

**1 Deanston Gardens, Barrhead, Glasgow, G78 2BN (House)**

1. On 18.4.24 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 8.3.17 with an initial term to 7.3.18, two Notice to Quit documents dated 15.1.24 to the date of 12.4.24, two S 33 notices dated 15.1.24 to the date of 12.4.24, a S 11 notice to the local authority and Sheriff Officers' executions of service of the S 33 and Notice to Quit documents on 18.1.24 . The Applicant stated the reason for the application

ground 8A.

2. On 10.5.24 the FTT wrote to request further information in the following terms: • Your application form states that you are relying upon ground 8A. However you have produced a Notice to Quit and a notice under section 33 of the Housing (Scotland) Act 1988. If you wish to rely upon ground 8A you require to have served a Form AT6 on the tenants in advance of the making the application. Please provide the Form AT6 together with proof of service if you wish to proceed on ground 8A. • Alternatively you may wish to proceed under section 33 of the 1988 Act which would be an application under Rule 66. If that is the case please provide an amended application form. Please also note that the Notice to Quit seeks to terminate the tenancy as at 12 April 2024. However the tenancy agreement states that the term of the tenancy was from 8 March 2017 to 7 March 2018. Thereafter the agreement states that the terminate will continue on a monthly basis. The Notice to Quit must terminate the tenancy at the end of the term (the “ish” date). It appears that the ish date is in fact the 7th of the month. Please advise on what basis you consider the 12 April 2024 to be a valid “ish” if you wish to proceed under section 33. • Please provide a written mandate from the landlords authorising you to represent them in these proceedings. Please reply to this office with the necessary information by 24 May 2024. If we do not hear from you within this time, the President may decide to reject the application.
3. On 24.5.24 the applicants’ representative provided authorisation for the agent by the applicants and wrote: I have asked you to consider the application under rule 66. Regarding the notice date – the 12<sup>th</sup> was provided after taking guidance from SAL.
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 an AT5 notice is served on the tenants prior to the commencement of the tenancy. The AT5 document is also stated as a requirement for an application under rule 66 (b) (ii). No AT5 document was provided with the application.
8. 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 12.4.24. The tenancy agreements shows that the initial terms was 8.3.17 to 7.3.18 and month to month thereafter. The Notice to Quit must be to an ish date. In terms of the tenancy agreement clause SECOND the only possible ish date is a 7<sup>th</sup> day of the month. 12.4.24 is not an ish date of the tenancy. A request for submissions was issued and the only representations made were that the date had been suggested by SAL. This does not address the point. The 12<sup>th</sup> day of the month is not a valid ish date for the tenancy and the Notice to Quit is not a valid Notice to Quit.
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. The lodging requirements for such an application have not been met. For the reasons stated above it would not be appropriate for the Tribunal to accept the application. 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.**

Petra Hennig McFatridge

Legal Member

12 June 2024