

Housing and Property Chamber  
First-tier Tribunal for Scotland



**Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)**

Case reference FTS/HPC/EV/24/2734

**Parties**

**Julie Duncan, Steven Duncan (Applicant)**  
**Jennifer Robertson (Respondent)**

**12 Stuart Road, Glenrothes, KY7 4HT (the Property)**

1. By application received by the Tribunal on 13 June 2024 the Applicants sought an eviction order against the Respondent under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 10 July 2024 the Tribunal wrote to the Applicants in the following terms:-

*“Your application has been considered by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters*

*Your application appears to be raised against one single tenant, namely Jennifer Robertson .The tenancy agreement which you have provided appears to be a short assured tenancy and has two joint tenants, namely Jennifer Robertson and Kalin Crawford. Please confirm whether your application is to be raised against the second joint tenant.*

*You have not provided a copy of the required Notice to Quit. Can you please do so and confirm the method of service upon the Tenants?*

*You have provided a copy of an undated and unsigned notice to leave. This is not the correct form to be used in short assured tenancies. This form is only used in private residential tendencies.*

*You have provided a copy of a form AT6 which bears to be dated 12 June 2024 with an effective date of 13 June 2024. This does not appear to give the required period of notice to your tenants.*

*All of the notices only appear to name Ms Robertson and not the other joint tenant. Please explain the reason for same.*

*You have provided a copy of an unsigned and undated section 33 notice. Can you please provide copies of signed and dated versions of all required notices together with proof of the method of service of the notices and evidence of delivery of them upon your Tenants?*

*You have provided a copy of the section 11 notice which is required to be delivered to the local authority. The copy provided does not indicate the appropriate legislation UNDER which you are making the application nor have you provided any evidence of delivery of this notice to the local authority. Please provide a fully completed notice and evidence of its delivery to the council . Please do so now.*

*Further queries may arise upon receipt of your response and examination of any further documents.*

*Please respond to this letter within the next two weeks . Upon receipt of the above information, a final decision can then be taken on whether the applications are valid and whether they should be accepted and referred to the tribunal for full determination.*

*The tribunal would respectfully suggest that you may wish to seek independent legal advice on this matter.*

*If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.”*

3. The Applicants provided a response by email dated 24<sup>th</sup> July 2024 in the following terms:-

*“It is a short assured tenancy in the names of Jenifer Robertson and Kalin Crawford dated 30/9/2016 - attached.*

*An AT5 was issued to both Jenifer and Kalin - attached Kalin Crawford left the premises as their relationship ended.*

*The tribunal application relates only to Jenifer Robertson. Notice to leave was sent to Jenifer along with a section 33 as per mygov.scot guidance - attached Notice to leave was emailed and posted recorded delivery 15/3/24 - evidence of postage attached, signed and dated copies attached.*

*I have to admit though that i find this one sided that this can't be requested from the tenant as it is not standard practice to scan recoded delivery items, after all the original document is meant to go to the tenant and via recorded delivery or email.*

*Notice to leave was created on mygov.scot and stated an application will not be submitted to the Tribunal for an eviction order before 10 June 2024 Guidance*

*on mygov.scot states the following for a short assured tenancy, i believe our notice contains all the necessary information. A notice to quit is only valid if it:*

- is in writing*
- tells the tenant how long their notice is*
- ties in with the 'ish date' (the date the tenancy agreement ends)*
- makes it clear that even when the notice runs out you still have to get an eviction order from the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal' for short) before the tenant has to leave*
- tells the tenant that they can get independent advice, and tells them where they can get it.*

*An AT6 was also sent as per mygov.scot guidance and stated proceedings would not be raised before the 13th June - attached Scotland.shelter.org.uk guidelines states the following The landlord must use a different notice called an AT6 form stating 1 or more of 17 grounds if either:*

- Tenant has a short assured tenancy, and they want to evict you during your fixed term.*
- Tenant has an assured tenancy*

*The eviction application is not within the fixed term period.*

*A section 11 was also sent to the local authority although this is not specifically recommended on mygov.scot guidance we felt it best to do so. I will also send this a second time via recorded delivery but again not specifically required - attached. Recorded delivery evidence to follow tomorrow.*

*Application was made to tribunal on 13th June - attached. Please excuse our errors as we are not lawyers and the entire process has become very difficult to navigate since we started being landlords nearly 20 years ago. As such we can no longer deal with the legislation and crippling costs of running rental houses and are trying to sell our portfolio so we can survive the cost of living crisis. What is alarming is that although you say you can not provide legal advice, the same can not be said of tenants, who are receiving free guidance from the local authority on how to push evictions to the tribunal. Due largely to them having too few houses in stock to let.*

*If we have missed a step or incorrectly applied the process then let us know. We need to sell our property ASAP as we are currently working to fund tenants.”*

Along with their email the Applicants provided an signed notice under section 33(1)(d) of the Housing (Scotland) Act 1988 dated 15 March 2024, a signed notice to leave dated 15 March 2024, a copy of the short assured tenancy agreement between the parties together with Form AT5, a section 11 notice, a form AT6 dated 12 June 2024 which stated that proceedings for possession would not be raised any earlier than 13 June 2024, and a recorded delivery postal receipt dated 15 March 2024. On 25<sup>th</sup> July 2024 the Applicants emailed proof of delivery of the section 11 notice in the form of a recorded delivery postal receipt dated 25 July 2024.

4. 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".
5. I consider that this application is frivolous and has no reasonable prospect of success in its current form. Whilst the Applicants have selected Rule 65 on the Form E application form, they have stated in the "possession/eviction grounds" section of the form that they are proceeding under Rule 66. Rule 66 applies to possession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988. In order for an application to succeed under Rule 66 the Applicants must serve a notice to quit to terminate the tenancy at the end of the current term, together with a notice under section 33(1)(d) of the Act. Whilst the Applicants have produced the latter, they have not provided a valid notice to quit. For the avoidance of doubt, a notice to leave is not the equivalent of a notice to quit. Notices to leave apply to private residential tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy between the parties in this case is a short assured tenancy, as defined by section 32 of the Housing (Scotland) Act 1988. The application does not therefore comply with the basic requirements of section 33 of the 1988 Act.
6. I considered whether the Applicants could instead rely on the Form AT6 they had provided with the application and proceed under Rule 65 as an alternative. However the AT6 is fundamentally flawed. It does not give the required notice to the tenant under section 19 of the Housing (Scotland) Act 1988. The Form AT6 is dated 12 June 2024 and provides that proceedings for possession may not be raised any earlier than 13<sup>th</sup> June 2024. The minimum notice period for a Form AT6, depending on the grounds relied upon, is 14 days. The Form AT6 does not therefore comply with the legal requirements of the Housing (Scotland) Act 1988.
7. Accordingly, I concluded that the application is bound to fail due to the Applicant's failure to comply with the required statutory process applicable to the tenancy between the parties. The application is therefore futile and falls to be rejected.
8. Residential tenancy law can be complex, and the Tribunal does have sympathy with the Applicants who expressed the stress they have experienced in going through the Tribunal process. It would however strongly benefit them to seek independent legal advice prior to submitting a future application to ensure that any application is compliant with the statutory requirements applicable to the tenancy between the parties.

**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.

# R O'Hare

**Ruth O'Hare, Legal Member**  
**15 August 2024**