



**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/PR/24/1040

Parties

Mr Peter Robertson (Applicant)

Mr Colin Wagstaff (Respondent)

65 Union Street, Cowdenbeath, Fife, KY4 9SA (House)

45 Halidon Avenue, Greenfaulds, Cumbernauld, G67 4FB (House)

1. On 3.3.24 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 an AT5 document dated 11.2.19, a tenancy agreement commencing 11.2.19, a document headed Notice to Quit dated 5.2.23 to the date of 31.2.24, which did not state the information required by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended, a S 33 document dated 5.10.23 to a date of 31.1.24 and an AT6 document

dated 5.10.23 on a ground as stated 1A Intend to sell property to a date of 31.1.24, a S 11 notice highlighting as the relevant legislation S 56 of the Private Housing (Tenancies) (Scotland) Act but no confirmation as to how any of these documents were sent.

2. On 27.3.24 the FTT wrote to request further information in the following terms: A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required: You have provided a tenancy agreement for a tenancy which started on 11.2.2019. In terms of S 1 of the Private Housing (Tenancies) (Scotland) Act 2016 a tenancy entered into after that Act came into force cannot be a new Short Assured Tenancy under the Housing (Scotland) Act 1988 and will be a Private Residential Tenancy governed by the Private Housing (Tenancies) (Scotland) Act 2016. Rule 66 does not apply to tenancies under the 2016 Act. A new residential tenancy entered into in 2019 cannot be terminated with a Notice to Quit and S 33 notice. You would have to provide a notice relevant to tenancies under the 2016 Act. Please now either make representations explaining why you consider the tenancy is not a Private Residential Tenancy in terms of S 1 and Schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 or provide an amended application quoting the correct rule, applicable notice together with proof of service, S 11 notice and proof of service together with evidence for any applicable eviction ground. You may wish to withdraw the application if you are not able to provide the above documents and you are strongly advised to take independent legal advice on the matter. The Tribunal's website under the "useful links" button provides links to some free advice services if you cannot afford a solicitor. No reply was received.
3. By letters dated 7.5.24 and 24.6.24 the FTT again requested the same information.
4. No reply was received.
5. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 7. 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

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.

1. S 12 (1A) of the Housing (Scotland) Act 1988 states: "A tenancy cannot be an assured tenancy if it is granted on or after 1 December 2017". The tenancy was entered into on 11.2.2019, which is a date after 1.12.2017.
2. The decision is made on the basis that the application was made under rule 66. Rule 66 relates to applications based on S 33 of the Housing (Scotland) Act 1988. As explained to the Applicant in the initial letter requesting further information, the tenancy agreement lodged shows a start date of 11.2.19. The Private Housing (Tenancies) (Scotland) Act 2016 came into force on 1.12.2017 and any new private residential tenancy in Scotland which was entered into after that date is automatically a Private Residential Tenancy and not a Short Assured Tenancy under the Housing (Scotland) Act 1988. The tenancy thus is a Private Residential Tenancy and not an Assured Tenancy, to which the eviction process under the Housing (Scotland) Act 1988 could apply.
3. It would not be appropriate for the Tribunal to accept the application which is made under the wrong legislation and rule. The Applicant had been given ample opportunity to amend the application to the correct rule and to provide the appropriate documentation. The Applicant has failed to communicate with the Tribunal since March 2024. 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
1 August 2024