



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 Mr Alan Connell in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/24/2585

At Glasgow on 19 August 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) of the Rules.

1. This is an application by Mr Alan Connell for recovery of possession of the property at Flat 0/3 8 Dinmont Street Glasgow G41 3UD in terms of rule 66 of the rules.
2. The application was dated 5 June 2024 and received by the Tribunal on 7 June 2024.
3. The application was incomplete and the Tribunal wrote to the applicant on 7 June 2024 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- The tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give
 - A copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable)
 - Evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority Please reply to this office with the necessary information by 14 June 2024, otherwise the application may be rejected.
4. The applicant responded on 9 June 2024 by sending a copy of the tenancy agreement. He also stated that would send the section 11 notice.

5. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 8 July 2024 as follows:

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

- (1) You have applied for an eviction order under Section 33 of the Housing (Scotland) Act 1988 and Rule 66 of the Tribunal Rules. Rule 66 sets out the information which must accompany all applications. Intimation to the local authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and proof of receipt from the local authority must be provided. Please supply this essential information.
- (2) The tenancy agreement you have submitted shows two tenants: Helen Square and Isobel K White. The AT5 which you have submitted was issued to Helen Square. Please provide a copy of the AT5 issued to Isobel K White to allow Rule 66 to be applied.
- (3) The Application and the Notices name only Isobel K White. Please explain and evidence the reason for not including Helen Square in both the Application and the Notices.
- (4) The Notice to Quit does not conform to the format prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) 1988. Please explain why the Notice to Quit is valid.
- (5) Further, the Notice to Quit and the section 33 Notice require to be served. You have submitted an email dated 3 March 2024 from you to Isobel White which states that it attaches a Notice to Quit and a Section 33 Notice but the Notices themselves are not attached. You end the email with "Please let me know if the documents are OK and I'll sign and deliver them". Isobel White replies by email dated 6 March 2024 stating "Documents fine, tenancy agreement to end 2nd June. I will not require another month as I cannot afford it . Isobel". There is no evidence of what the documents referred to in either email contained and no evidence of service by Sheriff Officer or recorded delivery mail. Please supply the Notices in the correct format and with proof of service.

The procedure to terminate a short assured tenancy is complex and you should consider taking advice on this as the Tribunal cannot advise you on what you should do.

Please reply to this office with the necessary information by 24 July 2024. If we do not hear from you within this time, the President may decide to reject the application.

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6. The applicant responded on 24 July 2024. He attached a document which purported to be a section 11 notice to the local authority. The notice was not in the form set out in the regulations. He also gave the following submission in connection with the notice to quit:

I apologise for not using Form AT6 but I believe that the Notice to Quit served on 6 March 2024 includes all prescribed information with the possible exception of specific reference to the Act. Since there is no way to rectify this error, and the Tenant initiated the process and has not been prejudiced, I hope that the error is not fatal to the submission and that the Tribunal may exercise discretion.

7. In connection with service of the notices, the applicant has provided a copy of an email from the tenant confirming that she received the section 33 notice and the notice to quit dated 7 March. The email does not state when she received the notices.

8. I have reviewed this application today and I have decided to reject it. I consider the notice to quit is invalid and the tenancy has therefore not been brought to an end. As set out in Stalker on Evictions at page 54, the requirements for a valid notice to quit are that it must be in writing, contain the prescribed information, give the requisite notice period and tie in with the ish date.
9. The notice to quit provided does not provide the information set out in the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as follows:

SCHEDULE

INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT

1. Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the court.
2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.
3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre.

10. The tenancy is for the initial period of 2 June 2008 until 2 June 2009. As well as not having the prescribed information, the notice to quit does not have an ish date. The ish date in this case would be the 2 June. The notice to quit refers to the section 33 notice and is dated 7 March 2024 but it does not give the tenant a date to vacate the property. The notice to quit is therefore invalid and the tenancy is continuing.
11. There are other difficulties with this application. No proof of service of the notice to quit and section 33 notice has been produced. They appear to have been served by email whereas section 54 of the Housing (Scotland) Act 1988 requires the section 33 notice to be served on a tenant by delivering in to him, leaving it at the last known address, or by recorded delivery. There is no legal provision for service of the section 33 notice by email and the list set out in section 33 is exhaustive. Further, the section 11 notice is not in the proper form.
12. 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”.

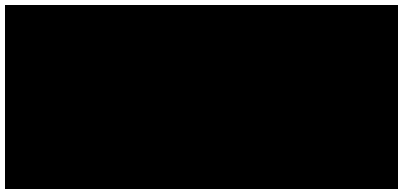
13. I consider that this application is hopeless and has no reasonable prospect of success as essential information such as a valid notice to quit has not been provided by the applicant. The applicant in his email of 24 July 2024 refers to the lack of an AT6 and asks the Tribunal to exercise its discretion in his favour. An AT6 would only be relevant for a rule 65 application and not the present application under rule 66. The Tribunal has no discretion to allow an application to be accepted under rule 66 without a valid notice to quit.

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