



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

Case Reference: FTS/HPC/EV/24/0929

111 Esslemont Avenue, Scoutstounhill Glasgow ("the Property")

**Stephen James Gallagher, Flat 4, 21 East Princes Street, Rothesay ("the
Applicant")**

**Lee Anne Lynch, 111 Esslemont Avenue, Scoutstounhill Glasgow ("the
Respondent")**

1. The Applicant seeks an order for possession in in terms of Rule 66 of the Procedure Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").
2. The Tribunal issued a request for further information and documents. The Applicant was directed to clarify the validity of the Section 33 Notice as it did not appear to give the Respondent two full months' notice as required by Section 33(2)(ii) of the 1988 Act. The Tribunal noted that the Notice was dated 30 November 2023 and had been served by Sheriff Officer on 1 December 2023. The notice stipulated that the tenant was to vacate the property by 31 January 2024. In response, the Applicant apologised for the error and submitted replacement notices. The new section 33 notice was dated 27 November 2023 and stated that the Applicant required possession of the property on 31 May 2024, three months after the application had been lodged with the Tribunal. On 1 May 2024, the Tribunal directed the Applicant to clarify which notice was relied upon and, if it was the latter, to address the fact that the notice period had not elapsed. The Applicant was notified that a failure to respond might result in the application being rejected. The Applicant has not provided a response to the request or to reminders send on 7 June and 23 July 2024.

Decision

3. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) of the Tribunal Procedure Rules 2017 which states that an application must be rejected if the Tribunal has “ good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

4. The Applicant lodged a section 33 notice with the application together with a Sheriff Officer certificate of service. This appeared to establish that the Notice dated 30 November 2023 was served on the Respondent on 1 December 2023. As the date specified in the Notice is 31 January 2024, the Notice appeared to be invalid as it does not to meet the requirements of Section 33 of the 1988 Act which states that the landlord must give the tenant at least 2 months notice. In response to a request for information from the Tribunal, the Applicant provided replacement notices, which appeared to give the Respondent 6 months, notice that the landlord required possession of the property. However, the date specified in these notices had not passed by the date that the application for possession was lodged. The Applicant also failed to provide evidence of service of these notices or confirm if it was the replacement notices which had been served by the Sheriff Officers.
5. On three occasions, the Tribunal has requested further information and documents from the Applicant in relation to the section 33 notices. The Applicant has failed to respond or provide the required information and documents.
6. The Applicant has failed to provide a valid section 33 notice as required by Section 33 of the 1988 Act and Rule 66 of the Rules 5. The Applicant has also failed to provide a response to requests for information from the Tribunal in terms of Rule 5(3) of the Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.

Josephine Bonnar, Legal Member
29 August 2024