

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/24/2963

Parties

Alexander James Shaw (Applicant)
Pawel Jerzy Wozniak (Respondent)

47 Kenneth Street, Inverness, IV3 5PZ (the Property)

1. By application received by the Tribunal on 1 July 2024 the Applicant sought an eviction order against the Respondent under Rule 66 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 Applicant in the following terms:-

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

1. Please note that the Notice to Leave document you sent is a not a Notice to Quit for a Short Assured Tenancy. It is a document that can only be used for tenancies under the Private Housing (Tenancies) (Scotland) Act 2016...If you wish to insist on the application you must provide a valid Notice to Quit and proof of service.

2. Please make representations as to why you consider the tenancy is a Short Assured Tenancy. The requirement for a Short Assured Tenancy is that the tenancy is for an initial period of no less than 6 months. The tenancy appears to be for a negative period as it starts on 15 July 2011 and ends on 14 January 2011, which is not possible and certainly a period of less than 6 months. Even if the second date should be 2012 please make representations as to how that period would be no less than 6 months as it appears a day short of that period.

3. You have not provide a S 11 notice and proof of sending this to the local authority. Without this an application cannot be made.

4. The AT6 notice you sent, which is not a document relevant to an application under rule 66, states as the date when proceedings can be raised 19 September 2024 – any application based on that document would at present have to be rejected as premature because the period has not expired.

5. *The title deeds show that the property is owned by a company and not by the Applicant. Please make representations as to why the Applicant has the title and interest to make this application.*

You are strongly advised to seek legal advice. It is highly likely that this application will be rejected as it does not meet the lodging requirements. You may wish to consider to withdraw the application and make a fresh application when you have all the necessary documents. If you wish to do this please confirm this in writing.”

3. The Applicant provided a response by email dated 14th August 2024 in the following terms:-

“In reply to your mail dated 06/08/24

1) SEE ATTACHED DOCUMENT

2) The lease was written by my then solicitor Torquil MacLeod , he has obviously made an error with the 14th January 2011 , which should obviously read 2012 , which proves even the solicitor can get it wrong ! If the dates are inclusive , would that not amount to a period of 6 months !

3) the S11 form was an online application which has been sent to the Highland Regional Council on 13/08/24

4) acknowledged

5) The property 47 Kenneth Street is owned by Alexander James Shaw , who is the sole shareholder & outright owner of Cullernie Properties , that is why I applied for the notice in the name of Alexander James Shaw.

We would appreciate if this plea was put forward to the First Tier Tribunal as the longer this tenant remains with the animals in the property , the worse it is going to be.”

4. Attached to the Applicant’s email was a document headed NOTICE TO QUIT which did not contain the prescribed information required by the Notice to Quit etc. (Prescribed Information) Regulations 1988 (“the 1988 Regulations”). The document stated *“I am giving you a notice to leave the above property, 47 Kenneth Street, Inverness, IV3 5PZ with the end date being on 26.08.2024 which is effective as of the 26.06.2024 which has already been served to you.”*
5. 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”.

6. I consider that this application is frivolous and has no reasonable prospect of success in its current form. The Applicant seeks an eviction order under Rule 66. An application under Rule 66 must satisfy the provisions of section 33 of the Housing (Scotland) Act 1988. Section 33 states:-

“(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating;

(c)

(c) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(d) that it is reasonable to make an order for possession.”

7. A landlord must therefore serve a tenant with a notice to quit, bringing the tenancy to an end at the ish date to prevent tacit relocation from operating. The Tribunal has asked the Applicant to provide a valid notice to quit. He has however provided a document that does not comply with the requirements of a notice to quit, in that it does not terminate the tenancy at the ish date, and it does not contain the information prescribed by the 1988 Regulations. Accordingly it is impossible for the Applicant to satisfy the requirements of section 33(1)(b).

8. I considered whether the Applicant could instead rely on the Form AT6 he provided with the application and proceed under Rule 65 as an alternative with an amended application. However the AT6 is fundamentally flawed in that the notice period has not yet expired. Furthermore the grounds for possession stated in the Form AT6 apply to private residential tenancies, as opposed to assured tenancies. The Applicant cannot therefore rely upon the Form AT6 in the current application.

9. Accordingly, I concluded that the application is bound to fail due to the Applicant’s inability to satisfy the provisions of section 33 of the Housing (Scotland) Act 1988. The application is therefore futile and falls to be rejected.

10. Residential tenancy law can be complex, and the Tribunal does have sympathy with the Applicant who is understandably keen for his application to proceed. I would strongly urge the Applicant to seek legal advice prior to submitting a future application to ensure that he can fully comply with the statutory requirements applicable to an action for possession of a short assured tenancy.

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
11 September 2024