



**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/EV/24/3127

Parties

Mr Stephen Farquhar (Applicant)

Miss Carol Ann Gunn (Respondent)

DAH Glasgow Limited (Applicant's Representative)

191 Kingsacre Road, Glasgow, G44 4LX (House)

1. On 8.7.24 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 a Notice to Quit document dated 5.4.24 to a date of 29.6.24, a S 33 document dated 5.4.24 to a date of 29.6.24, proof of recorded delivery service of both documents on 6.4.24 and a S 11 notice with email sending same to the local authority.
2. On 4 occasions the FTT wrote to request further information and the explanation that

an application under rule 66 requires the applicant to provide a copy of the tenancy agreement or as much information as possible about the tenancy and a copy of the aT5 document. The FTT wrote in particular on 6.8.24 "Before a decision can be made, we need you to provide us with the following: • It is noted that you do not hold a copy of the tenancy agreement. To enable the Tribunal to consider the validity of the section 33 notice and the notice to quit please provide as much information as you can regarding the tenancy such as – the commencement date; the agreed term; whether the parties agreed that the tenancy should continue on a month to month basis on expiry of the agreed term; if you do not know the agreed term please provide any other information which may indicate the term such as whether rent is due / paid on the same date each month; a copy of any rent increase notices that were issued." and on 6.9.24 "A Legal Member of the Tribunal with delegated powers of the President has considered your application. 1. An application in terms of Rule 66 and Section 33 of the 1988 Act can only be made if the tenancy is a short assured tenancy. The Applicant must be able to provide evidence that the tenancy is a short assured tenancy. You have not provided a tenancy agreement or AT5, both of which are required in terms of the Rules. You have also failed to provide evidence that the tenant was issued with an AT5 or that there was an agreed initial term of at least 6 months. 2. In order to obtain an order for possession under Section 33 a landlord must serve a valid notice to quit on the tenant. The Tribunal cannot determine the validity of the notice unless you provide a start date of the tenancy. You have not done so, although you have indicated that the rent is due on the 9th of each month which suggests that the tenancy may have started on the 9th. If this is the case the Notice to quit is invalid as the date specified would not coincide with an ish date. For the reasons outlined it does not appear that the application can be accepted without further information and documents. Please either provide the documents and information requested or confirm if you wish to withdraw the application. You may wish to take legal advice before you respond."

3. On 7.8.24 the agent send the following further information: Hi I have spoken with the Tenant Ms Gunn and she has advised that she moved in in July 2015 and as far I had been made aware it was just a standard short assured tenancy. Other than that, I have no information relating to her tenancy agreement. Her rent is due on 9th of each month however as she is in receipt of universal credit, she pays this in 2 weekly payments as she is paid 2 weekly by universal credit. Please let me know If you require anything else.
4. The FTT wrote again on 10.24: "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: 1. Please provide written authorisation from the Applicant for the agent. 2. You state in the notice to quit and S 33 notice that the tenancy started on 28.7.15. Can you please confirm whether this is in fact the start date? Was the tenancy a tenancy for 6 months and thereafter from month to month or was it continued under tacit relocation? Does the landlord or their solicitor have a copy of the documentation regarding the AT5 and tenancy agreement – even if this is an unsigned

document rather than the original signed copy? If so please submit this. 3. If you cannot provide the relevant information please consider withdrawing the application and re-applying once you can provide the necessary documents. Please confirm your position within 14 days. Please reply to this office with the necessary information by 8 November 2024. If we do not hear from you within this time, the President may decide to reject the application.”

5. On 25.10.24 the agent replied to the further information requests: “Good afternoon 1. I have asked the landlord to provide me with his authorisation 2. I believe the tenant has a copy of her original paperwork however she is not providing us with a copy, I have written confirmation from the previous managing agents that the tenancy commenced on 28.07.2015 however they failed to provide us with any supporting paperwork ie lease and at5 documents. Is it possible that the tribunal could approach the tenant and ask her to provide them with a copy of their agreement? 3. You say if we cannot provide the required documentation to consider withdrawing our application however the landlord does require vacant possession of the property so that is not an option, its highly unlikely that we’ll be able to recover the missing documentation as we took over the tenancy whilst the tenant was already in situ therefore its not something we have ever had drawn up and in our possession. Because his previous letting agents have failed him in terms of paperwork, where does this leave the landlord if he is never going to be able to have this documentation”
6. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

- 8. 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. The decision is made on the basis that the application was made under rule 66. Rule 66 (b) (i) requires the Applicant to lodge a copy of the tenancy agreement, or if this is not available, as much information as they can provide. This was not done. The tenancy agreement was repeatedly requested. It was not lodged with the application. The information provided was at best that the tenancy agreement commenced in July 2015 and that it was a “standard short assured tenancy” (reply of 7.8.24). The agent did not specify which provisions were made for the termination of the tenancy. The information stated on 25.10.24 is that the tenancy started on 28.7.15. Without further information regarding the tenancy agreement it is not possible to ascertain whether the application was accompanied by a valid Notice to Quit. The Applicant was advised of the consequence of not lodging a tenancy agreement. It is not clear why the Applicant has not obtained the necessary information from the previous letting agent, which whom they would have had a contractual relationship.
2. The correspondence from the FTT clearly indicated that it would be advisable to seek legal advice. The FTT as a judicial body cannot provide legal advice to parties. Ultimately it is the responsibility of the Applicant to ensure they can produce the information required to make an application. The Applicant as landlord should be aware of the content of the tenancy agreement but has not provided the necessary information regarding the terms of the lease.
3. The Applicant had been given ample opportunity to provide the missing information and documentation. It would not be appropriate for the Tribunal to accept the application without the required tenancy agreement, the AT5 document and without at the very minimum sufficient information to establish whether or not the Notice to Quit was issued to a valid ish date. The lodging requirements for the application have not been met. The application in terms of rule 66 is thus rejected.
4. This does not prevent the Applicant from lodging a fresh application once the relevant details can be provided.

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
3 December 2024