



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 David Easton in terms of Rule 66 of the Rules.

Respondent: Laura Allan

Case reference FTS/HPC/EV/24/4642

At Glasgow on the 13 January 2025, 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) and (c) of the Rules.

1. This is an application by Mr David Easton to recover possession of the property at 64 Ryan Road Glenrothes KY62EW on the expiry of a short assured tenancy, in terms of Rule 66 of the Rules.
2. The in-house convenor reviewed the application and the Tribunal sent a request for further information on 11 November 2024 as follows:
 - (1) If your position is that the original tenancy agreement continued on a six monthly basis after the original term, please advise how any documentation you have served on the tenant requiring the tenant to remove from the property by 8th August 2024 brings the tenancy agreement to an end since the original tenancy ran until 23rd of September 2013 and would have continued 6 monthly from that date.
 - (2) Please confirm whether any notice to quit was served on the tenant after the notice to quit lodged which appears to require the tenant to quit the property on 23rd September 2013.
 - (3) Please provide proof of service of the s 33 notice and notice to quit on the tenant.
 - (4) Please provide the required statutory notice which is sent to the local authority in relation to an application for eviction from a tenancy of this type, together with proof that this has been sent to the local authority.

3. The applicant responded on 11 November 2024 as follows:

With regard to your email received today - here is my response as I understand your requests.

(1) The tenancy agreement was for an initial period of 6 months which has continued on a month-to-month basis since.

(2) The agreement was that the tenant could be given 2 months' notice to leave which was done by email to show that this had been done in June 2024. See copy below.

(3) Copy of email to tenant as requested.

4. The applicant also attached a copy of an email to the tenant sending the section 33 notice.

5. The Tribunal sent a further request for information on 9 December 2024 as follows:

(1) The tenancy agreement provides that the term of the tenancy was 22 March 2013 to 23 September 2013. There is no provision in the tenancy agreement for it to continue on a monthly basis thereafter. The doctrine of tacit relocation means that the tenancy will renew on exactly the same terms. Please explain on what basis you consider the tenancy would continue on a month to month basis after the initial term.

(2) Even if the tenancy continued on a month to month basis after the initial period, on what basis could 8th August ever be an end date? It appears to the Tribunal that the section 33 notice is invalid. Please confirm that you wish to withdraw the present application to enable you to serve valid notices on the respondent. For any future application, please note that we need to see evidence of service of any notices. You also require to serve a section 11 notice on the local authority.

6. The applicant responded on 10 December 2024 as follows:

In answer to the first comment, I did not pick up on reading the tenancy agreement that the agreement could not just run on until I gave the 2 months notice required by the section 33 notification. Originally I was going to use the fact that I am going to sell the property until, on looking at the various grounds for repossession I realised that the section 33 route seems less confrontational and (I thought) more straightforward to action.

Concerning the choice of date. As the tenant tended to pay her rent in conjunction with local housing allowances on the 8th of each month most often during the approx 12 years duration of her tenancy, I thought that giving her 2 complete months' notice was what was required. The tenant was happy to accept this as she really needs a bigger house and cannot afford to rent one privately. However, although she is apparently at the top of the housing waiting list, the council told her that she did not need to leave and that I, as her landlord, would have to apply to the tribunal before they could help her!

Unless the tribunal has discretion to vary these conditions it would appear that you need me to start the process over giving a repossession date of 23 March 2025. This seems to me, to be unnecessarily adding stress to the tenant who is apparently suffering from mental health and monetary problems, when the outcome would eventually be the same in any case. Can you let me know what your colleague, who is posing these questions, thinks about the possibility of the tribunal accepting these explanations or if I really need to start from the beginning?

7. This is an application for eviction on the basis of the expiry of the tenancy agreement in terms of rule 66. There is a fundamental issue with the notice to quit which has not been resolved in the correspondence received from the applicant. The notice to quit is invalid as it does not tie in with the ish date of the short assured tenancy agreement. Without a valid notice to quit an application in terms of rule 66 cannot succeed as the tenancy has not been brought to an end.
8. 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".
9. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above.

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.

L. Ward

Legal Member