



**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/24/5039

Parties

Mr Kevin Wilson (Applicant)

31 Boswall Terrace, Edinburgh, EH5 2EL (House)

1. On 1.11.24 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 by a Tenancy Agreement commencing 1.2.13 with an initial term stated in clause one as expiring on 31.7.13, an AT5 document dated 1.2.13, an undated and unsigned Notice to Leave under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) stating as the date when proceedings could be raised in part 4 31.10.24, a blank a S 11 notice to the local authority, a letter from a Housing Support Worker to the applicant dated 16.10.24, a letter from the landlords to the tenant dated 1.8.24 and a S 33 notice dated 1.8.24 to 31.10.24.
2. On 3.12.24 the FtT wrote to request further information in the following terms: 1.

There is a joint owner/landlord. Please submit an amended application with the joint owner/landlord details or written authorisation authorising the Applicant to make this application in his own name. 2. The application has been made under Rule 66 (termination of a short assured tenancy) and the tenancy agreement produced is a short assured tenancy. Such tenancies cannot be terminated by a Notice to Leave (which applies to Private Residential Tenancies not short assured tenancies). They must be terminated by service of Notice to Quit. Please provide a valid Notice to Quit along with proof of service on the Respondent. If you are unable to do so then please withdraw the application and resubmit once you have the correct documentation. 3. Please provide a completed section 11 Homelessness Notice along with proof of service on the local authority. The Notice you have provided is blank. 4. Please provide proof of landlord registration.

3. On 13.12.24 the applicant sent evidence of a landlord registration for Joanne Wilson but not for Kevin Wilson, an undated email sending the S 11 notice and the S 11 notice itself, a S 33 notice dated 10.6.24 to the date of 11.9.24, a Notice to Quit dated 10.6.24 with the end date of 11.9.24 with a cover letter, a delivery slip dated 15.6.24 and a letter from Joanne Wilson stating she authorises Kevin Wilson to assist her in providing evidence to the FtT.
4. On 21.1.25 the FtT wrote to the applicant in the following terms: You were asked to submit an amended application with the joint owner/landlord details or written authorisation authorising the Applicant to make this application in his own name. You appear not to have fully answered this question. the letter of authorisation from the joint landlord does not set out either of the two options. Please clarify the position. The initial tenancy bears to run from "1 February 2023 to 31 July 2013". In the notice to quit which has now been provided, it is indicated that the tenant requires to quit the premises by 11 September 2024. Does the notice to quit specify a removal date which is an "ish" or end date of the tenancy? If not on what basis is the purported notice effective and valid in law? Please provide evidence of the method of service of the notices. The documentation you have provided does not provide that evidence. Please provide appropriate Royal Mail receipts/certificates for both posting and tracked delivery showing the dates the notices were posted and received. Please confirm which of the two section 33 notices you wish to rely upon. Please also provide evidence of the method of service of these notices. The tribunal would suggest that you may find it useful to seek independent legal advice on this application, the matters contained in this letter and any further action which you wish to take. The tribunal is an independent judicial body and cannot provide advice to applicants on matters connected to the application. You require to seek independent legal advice on any query you may have.
5. On 3.2.25 the applicant provided a recorded delivery slip dated 14.6.24 relating to the S 33 notice and Notice to Quit with delivery signature 15.6.24, a further copy of the S 33 notice dated 10.6.24 confirming this was the document they rely on, a letter

by Joanne Wilson authorising Kevin Wilson to make the application in his own name, and a reply that "The notice to quit was the end date of the tenancy".

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

Rules of Procedure:

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.

9. The tenancy agreement produced together with the AT5 document shows a Short Assured Tenancy with an initial term from 1.2.13 to 31.7.13 with no provision that the tenancy then continues month to month. Thus in terms of tacit relocation the tenancy would then continue by the term of the initial period, 6 months, to the last day of the 6th months until terminated to an ish date. The Notice to Quit lodged with the application requires the tenants to quit the premises on 11.9.24. The Notice to Quit must be to an ish date. 11.9.24 is not an ish date of the tenancy. A request for submissions was issued and not answered other than to say the day stated in the Notice to Quit is the end date of the tenancy. No explanation or calculation of how this would be arrived at was

provided. The 11th day of a month is not a valid ish date for this tenancy agreement.

10. I consider that the application is not accompanied by a valid Notice to Quit as required in Rule 66 (b) (iv) of the Procedural Rules. The Notice to Quit was not to an ish date and thus invalid. The contractual tenancy continues.
11. For the reasons stated above it would not be appropriate for the Tribunal to accept the application. The lodging requirements for such an application have not been met. The application in terms of rule 66 is thus rejected.

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

10 March 2025