



**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 Paul Kerr in terms of Rule 66 of the Rules

**Case reference FTS/HPC/EV/24/5222**

At Glasgow on the 14 May 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 Paul Kerr to recover possession of the property at 20 St Leonard’s Court Kinghorn KY3 9TS on the expiry of a short assured tenancy, in terms of Rule 66 of the Rules. The application was made on his behalf by McKenzies Solicitors on 13 November 2024.
2. The in-house convenor reviewed the application and the Tribunal sent a request for further information on 9 December 2024 as follows:
  - You have made an application under rule 66 but you have sent an AT6 which only relates to rule 65. Please clarify.
  - You have sent us a notice to quit from 28 January 2011. If you are relying on this notice to quit please provide proof of service and provide your written submission regarding its validity given the terms of the memorandum of agreement dated 29 June 2011 and 28 November 2011 which would suggest a new contractual tenancy on both occasions.
  - Please provide proof of delivery of the section 33 notice.
  - Please tell us the reasons for the eviction application.Please reply to this office with the necessary information by 23 December 2024. If we do not hear from you within this time, the President may decide to reject the application.

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's solicitors responded on 20 December 2024 as follows:

The Notice to Quit from 2011 was attached to the copy Lease as served on the tenant at the outset of the lease, which was normal practice. The current Notice to Quit was submitted with our application and is dated 16 April 2024. The recorded delivery receipt and Royal Mail tracking information was submitted with our application along with a signed acknowledgement of receipt from the tenant.

7. A second notice to quit was provided. It was dated 16 April 2024 with an ish date of 28 June 2024.

8. The in-house convenor reviewed the application again and a further request for information was sent to the applicant's solicitors on 5 February 2025 as follows:

(1) Please provide proof of delivery of the notice to quit and section 33 notice. We note the postal receipt but we require evidence that the tenant has received the notices, e.g. tracking information from Royal Mail.

(2) Please explain the legal basis upon which 28 June 2024 is a valid ish date. We note the term of the original tenancy was 28 January 2011 to 29 July 2011. The tenancy was thereafter continued by the memorandums of agreement, the latter of which continued on the same terms as before from the 28 November 2011.

There does not appear to be any provision for the tenancy to continue on a monthly basis.

(3) Please confirm that you are proceeding under Rule 66.

(4) Please explain the reasons for the eviction application.

9. The solicitors replied on 18 February 2025 as follows:
  - (1) Royal Mail's online tracking information for the delivery of the notice to quit and section 33 notice has failed and despite the letting agent investigating that with Royal Mail they have provided no explanation for the lack of update on their tracking system since 16 April 2024. However, with our application we have provided an acknowledgement of receipt of the notice to quit and section 33 notice signed by the tenant.
  - (2) We would draw your attention to clause 8.4 of the original tenancy agreement regarding variation of term. The term of the original tenancy was for six months to 29 July 2011. The last Memorandum providing for the tenancy continuing from 29 July 2011. The tenancy then proceeded on a six monthly basis by tacit relocation. Notice to quit was given on 16th April 2024 to provide sufficient notice prior to the next end date of 29 July 2024.
  - (3) Confirmed.
  - (4) The tenant has not removed from the property following being served notice to quit and ownership of the property is no longer affordable for our client.
10. The Tribunal sent a further request for information and clarification on 1 April 2025 asking for proof of date of receipt of the notices and asking for submissions on the validity of the notice to quit, given that they appear to accept the ish date is 29 July 2024.
11. The applicant's solicitors responded on 14 April 2025. They state that they have no written proof of the date of receipt of the notices. They do not provide any submissions on the validity of the notice to quit other than to point to clause 8.4 of the tenancy agreement. Clause 8.4 of the tenancy agreement provides:
 

The 'Term' shall mean the period stated in the particulars above or any shorter or longer period in the event of an earlier termination or an extension or holding over respectively.

Term is referred to in the agreement as:

The tenancy is for a period commencing on 28/01/2011 expiring on the 29/07/2011.
12. 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's solicitors. It appears to be agreed that the ish date is 29 July. Even if the issue of proof of service of the notices could be resolved, the notice to quit being relied on has an ish date of 28 June 2024. The notice to quit is therefore 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.
13. 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”.

14. 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