



**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/26/2979

Parties

Dr Colin MacPherson (Applicant)

68 Suilven Way, Kinmylies, Inverness, IV3 8PD (House)

1. On 29.6.26 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 31.7.12 with an initial term to 31.1.13 and a rolling two monthly continuation thereafter, a S 33 notice dated undated but received on 20.2.26 to a date of 12.6.26, a S 11 notice to the local authority and email sending same and a document headed Notice to Leave-Short Assured Tenancy to a date of 12.6.26 and dated 20.3.26 with receipt confirmed by the Respondents.
2. On 29.7.26 the FTT wrote to request further information in the following terms: Thank you for your recent application which has been reviewed by a Legal Member of the Tribunal

with delegated powers of the President. Please provide the following further information: 1. Please provide a copy of the section 11 notice sent to the local authority. You have provided evidence that it was sent but you have not provided a copy of the actual notice. 2. Your application is made under rule 66. You have provided a copy tenancy agreement which commenced on 31 July 2012 and was for the period to 31 January 2013 and continued thereafter on a 2monthly rolling basis. The tenancy is therefore governed by the Housing (Scotland) Act 1988 ("1988 Act"). Please provide a copy of the AT5 issued at the beginning of the tenancy. Receipt of this is acknowledged in the tenancy agreement and you refer to it in the application, but a copy has not been provided. 3. You have lodged a notice in terms of section 33 of the 1988 Act which seeks to terminate the tenancy at 12 June 2026. You have also lodged a document headed "Notice to Leave – Short Assured Tenancy". This document is dated 20 March 2026 and seeks to terminate the tenancy at 12 June 2026. A section 33 notice requires to be accompanied by a notice to quit which terminates the tenancy at an "ish" date. In this case, the ish date would occur every two months after 31 January 2013. 12 June 2026 is not an ish date. The notice lodged which seeks to terminate the tenancy appears to be invalid. You should consider withdrawing the application and serving fresh notices in the correct format. Please reply to this office with the necessary information by 12 August 2026. If we do not hear from you within this time, the President may decide to reject the application.

3. On the same date the applicant replied: Thank you for your email and for outlining the three outstanding points. In response: 1. Section 11 Notice now attached - (Sorry, I wrongly thought it would be accessible from the copy of the correspondence with Highland Council) 2. AT5: As I understood it from my solicitors, the AT5 was attached as an annexe in the Tenancy Agreement file I sent - it was labelled Annexe A and Annexe B, Schedule 5 to the Housing (Scotland) Act 1988, on pages 7 and 8 of the document and was signed by the tenants, separately from the tenancy itself, back on 31 July 2012. Please let me know if this is adequate. 3. It is unfortunate that the notice did not fall on an "ish" date. I can restart the whole process if you think this is the best way forward. I should point out that the tenants are not in any way wishing to fight this case and are in fact eager to get on with the process. It is Highland Council that is insisting on legal proceedings so that the tenants are forced into homelessness. It is not the way I have ever acted or wanted to act as a landlord. These tenants have become my friends and they only seek some security of tenure for the next stage of their lives as I hit retirement, and the property requires more upgrading than either I or they can stretch to. But if you think it is best to start again we can and will do so - I would value your guidance on that point
4. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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

Applicable legislation: Housing (Scotland) Act 1988

32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six months; and

(b)in respect of which a notice is served as mentioned in subsection (2) below.

(2)The notice referred to in subsection (1)(b) above is one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the assured tenancy;

(c)is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

(3)Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a)it continues by tacit relocation; **F1**...

F1(b).

the continued tenancy **F2**... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4)Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy **F3**..., the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued **F4**... tenancy is not to be a short assured tenancy.

(5)Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

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.

7. The tenancy commenced on 31.7.12 and the applicant states an AT5 notice had been issued and had been part of the tenancy documentation. This was not part of the documentation lodged with the FTT. One requirement for a short assured tenancy in terms of S 32 (1) (a) of the Housing (Scotland) Act 1988 is that an AT5 notice is served on the tenants prior to the commencement of the tenancy. The AT5 document is also stated as a requirement for an application under rule 66 (b) (ii). Even after raising this point with the applicant, no AT5 notice was provided.
8. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application requires the tenants to quit the premises on 12.6.26. The tenancy agreements shows that the is of the tenancy could only be an end date of a month as it initially terminated on 31.1.13 and in terms of clause 1 then continued to 31.3.13 and thereafter on a rolling 2 months continuation. The Notice to Quit must be to an ish date. 12.6.26 can thus not be an ish date and thus the Notice to Quit is not valid. It is further not valid because it mixes terms of a Notice to Leave applicable to a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 with elements of a Notice to Quit relevant to a Short Assured or Assured Tenancy under the Housing (Scotland) Act 1988. For example the applicant took the notice period of 84 days from the 2016 Act. A Notice to Quit would require to contain the correct notice period for the tenancy in question, in this case 2 months as stated in the tenancy agreement, and fulfil the requirements under the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended by Regulation 3 of the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 and in force at the time the Notice was issued.
9. 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.
10. The lodging requirements for such an application have not been met. For the reasons stated above it would not be appropriate for the FTT to accept the application. The application in terms of rule 66 is thus rejected.

11. For the avoidance of doubt, this decision does not prevent a further application being made once all required documents are available. The applicant may benefit from seeking legal advice in the matter to ensure any further application meets the requirements of the rule it is made under. The applicant requested guidance from the FTT for the conduct of the application. As an independent judicial body the FTT cannot provide advice to parties.

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 McFatrige
Legal Member
19 August 2026