



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

87 McNeil Street Larkhall ML9 1BL (the Property)

Case Reference: FTS/HPC/EV/21/1020

**Mrs Patricia Brownlie 1 Burnhead Road Larkhall, ML9 2 EJ
(Applicant)**

Mr Barry Munro BBS Lets (Applicant's Representative)

Lorraine McGregor 87 McNeil Street Larkhall ML9 1BL (Respondent)

1. On 29th April 2021, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules, being an application for an order for possession of the Property on termination of tenancy and for the Tenant to vacate the property in terms of S33 of the Housing (Scotland) Act 1988.
2. The Applicant narrated as grounds for the eviction that a notice to quit and s33 notice had been served on the tenants requiring the tenants to leave the Property on termination of the tenancy and that the tenants had refused on

delayed in leaving.

3. The following documents were enclosed with the application:-
 - a. Tenancy agreement dated 2nd October 2015
 - b. A copy notice to quit and s33 notice both dated 28th February 2020
 - c. An AT5 notice dated 2nd October 2015.
 - d. Rent Statement
4. The Tribunal requested further information from the applicant by letter dated 6th May 2021, in particular the Tribunal asked for the following information:-

“I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:

 1. The Notice to Quit appears to be invalid. The date specified does not coincide with an ish date. Please explain the basis upon which the Tribunal can consider the application.
 2. If the application is to proceed, you are required to provide a copy of the Section 11 Notice sent to the local authority, with evidence it was sent, and a track and trace or other evidence that the notices sent to the Respondent were delivered.

Please reply to this office with the necessary information by 20 May 2021. If we do not hear from you within this time, the President may decide to reject the application.”
5. A response was received on 7th May 2021 and stated “Many thanks for your email. I have attached the Section 11 notice and confirmation of the email it was sent with. Royal Mail are unable to offer us any proof of the delivery, The ish date as far as we are concerned is correct as it is the day before the tenancy is meant to renew itself”
6. The Tribunal wrote again on 17th May 2021 asking

“Before a decision can be made, we need you to provide us with the following:

 1. Please provide proof of service of the notice to quit and section 33 Notice on the tenant. You have provided certificates of posting but not receipt;
 2. The Notices both specify the 1 May 2020 as the end date of the tenancy. The tenancy runs month to month from the 2nd day of each month to the 2nd

day of the following month. Please explain on what legal basis you consider the tenancy to have been validly terminated?

3. Please provide proof of landlord registration. Please reply to this office with the necessary information by 31 May 2021. If we do not hear from you within this time, the President may decide to reject the application.”

7. A reply was received later on 17th May 2021 which stated

“Hello Josh, Please find the information you requested. Landlord Reg No 449595/380/12181 We are not able to provide you with proof of receipt as Royal Mail remove tracking on items after 6 months.

We feel we have terminated the tenancy correctly as the termination date is on the “ish” date. The “ish” date is the day the tenancy ends and the day before the tenancy automatically renews itself. The renewal date is on the 2nd and we terminated it on the 1st. The issue here is the tenancy has been drawn up incorrectly, the end date and start date should not be on the same day, it is a clerical error. With the tenancy ending and renewing itself on the same day we are in a difficult position. If we had terminated the tenancy on the 31st this would also have been deemed unacceptable.

8. The Tribunal wrote again to the Applicant on 27th May 2021 requesting the reason and legal authority as to why he believed the ish date was correct stating:-

“Thank you for your response to our previous letter. We note the position regarding lack of proof from the Post Office of receipt by the Tenant.

With regard your response regarding the query over the ish date you appear to be both confirming that you believe the ish date is the 1st of the month because this is the day before, as you refer to it “the renewal date” but also appear to acknowledge that the 2nd is both the start and end date. Please clarify if you wish to proceed with your application based on a notice to quit that asked the tenant to leave on 1st May, you will require to advise why you believe that is the termination or ish date given the termination date specified in the lease and provide any legal authority to support your position which can then be discussed at a Case management discussion if appropriate.

You may wish to seek some legal advice on this point and you could seek this from a solicitor or other agency such as the citizen advice bureau. Please reply to this office with the necessary information by 10 June 2021. If we do not hear

from you within this time, the President may decide to reject the application.”

9. There was no response from the Applicant to this request on 27th May. A further request was sent on 24th June 2021 stating “ Before a decision can be made, we need you to provide us with the following:

We refer to our letter of 27th May to which we do not appear to have a response. We enclose a copy of this letter and would advise that if we don't receive a response in the next 14 days then it is likely your application will be rejected. If you wish to proceed with the application please respond or advise if you wish to withdraw it. Please reply to this office with the necessary information by 8 July 2021. If we do not hear from you within this time, the President may decide to reject the application.” No response has been received.

DECISION

10. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

11.

"Rejection of application

Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47, to 50, 55, 59,61,65, to 70,72,75 to 91, 93 to 95,98 to 101,103 or 105 to 111 as appropriate.

(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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."

12. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

13. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. '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*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

14. The applicant has failed to respond to the Tribunal's request for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding information has not been received. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

15. In addition The Notice to Quit does not specify a valid ish date.

16. The tenancy commenced on 2nd October 2015 and continued until 2nd April 2016 and thereafter on a monthly basis if not terminated. In the absence of any provision in Tenancy Agreement to the contrary it is assumed tacit relocation is in operation. Clause 3 of the Tenancy Agreement states "If the agreement is

not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until terminated under Clause 17 of this agreement.” As no submissions have been made that the tenant has given such written notice it is assumed that the tenancy has continued on a rolling month to month basis from 2nd April 2016 until the present date. That means the ish date should be 2nd of each month and the Applicant having given a Notice to Quit with an ish date of 1st May has failed to validly terminate the contractual tenancy, the 1st of May not being a date on which the tenancy automatically renews if not validly terminated. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

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.

Jan Todd
Legal Member
22nd July 2021