

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT

Under Rules 5, 8 & 66 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/19/1174

Mr. Adam Kindreich ("the Applicant")

Mr. Brian Kindreich ("the Respondent")

Background

1. On 16 April 2019, an application was submitted by the Applicant. The application is made under Rule 66 of the Procedural Rules. The following documents were enclosed with the application: Copy tenancy agreements, AT5, Notice to Quit, Section 33 Notice under the Housing (Scotland) Act 1988 ('the 1988') Act and an e mail from the Tenant.
2. On 2 May 2019 the Tribunal wrote to the Applicant requesting a copy of notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003 to the local authority of the present application. Said notice to be received by 16 May 2019.
3. On 2 May 2019 the copy notice was lodged.
4. On 28 May 2019 the Tribunal wrote to the Applicant requesting further documentation in the form of proof of service of the Notice to Quit and Section 33 Notice. Said proof to be received by 11 June 2019.
5. On 28 May 2019 the Applicant confirmed that his previous submission of 21 May 2019 contained copy proof. It had.
6. The matter then was considered by me today, given the response.

Decision

7. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

"Requirements for making an application

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 to be 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."*

8. 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.”

9. I considered the application in terms of Rule 66 of the Procedural Rules. That Rule provides:

‘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; and

(c)be signed and dated by the landlord or a representative of the landlord.’

10. After consideration of the terms of the application and the various documents produced, I consider that the application should be rejected on the basis that that it would not be appropriate to accept the application under Rule 8 (1) (c). The application should be rejected under Rules 5 & 66.

Reasons for Decision

11. The Tribunal must have regard to the mandatory requirements contained in Procedural Rules 5, 8 & 66.

12. The Tribunal must 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.
13. The Application form itself is dated 16 April 2019.
14. The Notice to Quit and section 33 Notice relied upon requires the tenant/Respondent to quit the Property on 1 May 2019.
15. The Application was accordingly submitted prematurely. Accordingly, for this reason, this application must be rejected upon the basis that that application does not contain the mandatory information needed to satisfy the requirements in Rules 5 & 66 of the Procedural Rules, as the date in the Notices on which it relies had not yet arrived and principally, that it would not be appropriate to accept the application under Rule 8 as it was made prematurely.
16. This Decision does not preclude the Applicant submitting a fresh application in the event that the Respondent does not leave by 1 June 2019 as is suggested in the paperwork.

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.

Ms Susan Christie

Susan Christie
Legal Member
29 May 2019