



**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

56 D Aurs Crescent Barrhead East Renfresshire G78 2LX

**Case Reference: FTS/HPC/EV/20/1568**

**Ross McMillan ("the applicant")**

**Robyn and Jason Convery ("the respondents")**

1. On 23.7.2020 the First Tier Tribunal for Scotland (the Tribunal) received an application made under Rule 66 of the Procedural Rules from the applicant's agent Western Lettings Ltd. The application stated as the Grounds of Eviction "Ground 8 : Mr and Mrs Convery are currently in £1800 of arrears, Mrs Convery is in receipt of Universal Credit however is not passing this on to Western Lettings. We have contacted both tenants constantly but hear nothing back".
2. Ultimately the Applicant provided with the application: a Notice to Quit dated 22.1.2020 to a date of 24.3.2020, recorded delivery slip for postage 22.1.2020, S 33 notice dated 22.1.2020 for 24.3.2020, a rent ledger, a tenancy agreement for the

property with AT5, correspondence asking respondent for payment dated 9.4.2020 and a S 11 Notice with email confirmation date 1.9.2020

3. By letter dated 8.9.2020 the Tribunal requested the following: "The term of the tenancy stipulated in the agreement which has been lodged is 24 February 2017 to 24 August 2017 and two monthly thereafter. The Notice to Quit appears to be invalid, as the date specified is 24 March 2020, which is not an ish. Please confirm the basis upon which the Tribunal can consider the application. 2. The application form refers to ground 8, rent arrears, the application is proceeding under Rule 66. Please provide a replacement section of the form which refers to Section 33 of the 1988 Act. 3. Please provide track and trace reports or other evidence of delivery of the Notices. Please reply to this office with the necessary information by 22 September 2020. If we do not hear from you within this time, the President may decide to reject the application."
4. No answer was received.
5. The documents are referred to for their terms and held to be incorporated herein.

## DECISION

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."*

After consideration of the application, the attachments and correspondence from the Applicant, the Tribunal considers 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**

### **Relevant 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;

(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

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

The Applicant had been given ample notice by the Tribunal of the issues identified regarding the documents produced with the application and chose not to make representations regarding the dates as stated above. He had been advised on 8.9.2020 that the application may be rejected should he not respond to the Tribunal's request for further information.

The application at present does not meet the lodging requirements for an application under Rule 66 as it was not accompanied by a valid Notice to Quit and as the application appears to be based on rent arrears rather than on S 33 of the Housing (Scotland) Act 1988.

The Tribunal considers that the requirement for lodging the documents stated in Rule 66 (b) of the Procedural Rules refers to a requirement to lodge notices that are, at least on the face of it, valid. Rule 66 (b) (iv) of the Procedural Rules requires lodging of "the notice to quit served by the landlord on the tenant;"

First of all it is not clear when the S 33 Notice and the Notice to Quit were served. The Tribunal was trying to clarify this in the request for further information. However, even if one assumes that the recorded delivery slip relates to both documents, the Notice to Quit served states as the date on which the notice ends 24 March 2020. In terms of the tenancy agreement lodged this is not an ish of the tenancy. The tenancy continued two months after the expiry of the original period from 24.2.2017 to 24.8.2017. Only the 24th day of an even month can thus be an ish of the tenancy. 24.3.2020 is not an ish date. The notice cannot terminate the tenancy to that date. The Notice to Quit is not a valid Notice to Quit.

The application thus did not include a valid Notice to Quit and thus did not fulfill the lodging requirements set out above.

Furthermore, the application must give the respondent fair notice of the ground on which the application is made. The application only referred to "ground 8" and not to the Notice in terms of S 33 of the Housing (Scotland) Act 1988. The Tribunal gave the Applicant the opportunity to amend the application accordingly, however the Applicant did not reply to the Tribunal's request of 8.9.2020 for further information.

Because the application did not include a valid Notice to Quit and the specification of the ground for eviction was not stated correctly in the application it would not be appropriate for the Tribunal to accept the application.

### **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  
13 October 2020