



**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

16 McEwan Crescent, Mossblown, KA6 5DR (the Property)

Case Reference: FTS/HPC/EV/20/1579

Miss Emma Donaldson C/O 53 Woodend Road Ayr (Applicant)

Ayr Estate & Letting Agents (Applicant's Representative)

**Mr James Rodie, Mrs Kayleigh Rodie 16 McEwan Crescent, Mossblown, KA6
5DR (Respondent)**

1. On 23rd July 2020, 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 3rd November 2017 but with a start date of 27th September 2017
 - b. A copy notice to quit and s33 notice both dated 20th February 2020
 - c. An AT5 notice dated 28th May 2015.
4. The Tribunal requested further information from the applicant by letter dated August 2020, in particular the Tribunal asked for the following information:-

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

1. You have advised that you enclose the S11 notice to the Local Authority with your application but none was received can you please send in a copy of the S11 Notice and evidence of when and how it was sent to the Council.

2. The AT5 enclosed is dated 29th May 2015 whereas the lease enclosed with the application is dated 3rd November 2017 but has a start date of 27th September 2017. Can you please advise if there is another AT5 that was served in connection with this tenancy? If so can you please provide a copy?

3. With regard to the service of the S33 Notice and the Notice to Quit are you able to provide evidence of delivery of the notice such as a track and trace receipt?

5. The Tribunal requested a reply with the necessary information by 9 September 2020 and advised that “If we do not hear from you within this time, the President may decide to reject the application.”
6. A response was received on 2nd September enclosing a track and trace dated 21st February 2020 and a copy of an e-mail to South Ayrshire Council. A copy S11 notice was received slightly later on 9th September. The Applicant’s agents also replied on 2nd September regarding the request for another AT5 stating “The only information that we do not hold is a new AT5.

However, as the lease agreement continued on as a short assured tenancy then there was no requirement to sign a new AT5.”

7. The Tribunal wrote again on 9th September 2020 asking “Please provide a copy of the original short assured tenancy agreement to which the AT5 produced relates. Please reply to this office with the necessary information by 23 September 2020. If we do not hear from you within this time, the President may decide to reject the application.”

8. The Applicant did not reply another legal member looked at the application and a further letter was sent stating

“Your Application and the further information provided in response to the tribunal’s requests have been considered by a Legal Member acting with the delegated powers of the tribunal president. You failed to respond to the tribunal’s further information request of 9 September 2020 and there is an issue with the content of one of the documents provided in relation to the tribunal’s request of 26 August 2020.

Further information is required to enable your Application to be considered:

1. Please provide a copy of a Section 11 Notice sent to the local authority which correctly specifies the legislation under which proceedings have been notified by ticking the correct box on the last page. The notice you have sent specifies different legislation from that upon which the Application is made.

2. Please provide proof of service of the properly completed section 11 Notice.

3. Please provide the tenancy agreement which followed upon the AT5 notice dated 29 May 2015. At present, the only tenancy agreement provided with the Application is dated 3rd November 2017, with start date of 27th September 2017. The tribunal’s request of 9 September 2020 that you provide the earlier tenancy agreement(s) has not been met.

Please reply to this office with the necessary information by 28 October 2020. If we do not hear from you within this time, the President may decide to reject the application”

9. There has been no response from the Applicant to either the request of 9th September or the further reminder and further request of 14th October.

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 documents have 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. Rule 66 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Tribunal Rules of Procedure) requires that 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,
- iii. The name and address of the tenant ()if known and
- iv. The ground or ground of eviction

b. Be accompanied by a copy of

- i. The tenancy agreement if available or if not as much information as the landlord can give
- ii. The notice by the landlord that the tenancy is a short assured tenancy
- iii. The notice given under S 33(1)(d) of the 1988 Act

- iv. The notice to quite serviced by the landlord on the tenant and
- v. A copy of the notice by the landlord given to the local authority under section 11 of the Homeless (Scotland) Act 2003 if applicable

16. Some of the mandatory requirements for lodgement required by Rule 66 have not been lodged namely the tenancy agreement that applies to the AT5 notice and a valid S11 notice and the Applicant has not responded to requests for those items to be lodged.

17. 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
10th November 2020