



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER, 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

6 Glenburn Gardens, Whitburn, EH47 8NL

Case Reference: FTS/HPC/EV/21/2121

Gillian Ruherford ("the Applicant")

Betty Lee ("the Respondent")

1. On 1st September 2021, an application was received from the Applicant, Ms Gillian Rutherford by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT). The application was made under Rule 65 of the Rules of Procedure.
2. On 21st September 2021 the FTT wrote to the Applicant seeking clarification on a number of matters: the application had been made under Rule 65 but a Rule 33 Notice had been provided which is required for an application under Rule 66, the notice to quit appeared invalid as the date specified did not appear to coincide with an ish or end date and evidence of service of notices was required. The Applicant was also asked to provide other information.
3. On 4th October the, Applicant responded and provided some information. She also indicated that the Application should be under Rule 66.
4. In relation to the matter of the ish date, the Applicant asked what the ish date should have been.

5. On 2nd November 2021, the FTT wrote to the Applicant in the following terms:
“You have indicated that you wish to amend the application to Rule 66. As previously advised, a valid Notice to Quit is required. The date specified in the Notice does not coincide with an ish or end date of the tenancy (please see the term specified in the tenancy agreement). Please note that the Tribunal cannot provide you with legal advice. You may wish to take advice from a solicitor or consult the CAB or a housing advisory service. Please note that a full copy of the AT5 is also required for an application under Rule 66- the document you have submitted is incomplete. Please advise the basis on which the Tribunal can proceed to consider the application.
Please reply to this office with the necessary information by 16th November 2021. If we do no hear from you within his time, he President may decide to reject the application.
6. No response was received from the Applicant.

B DECISION

1. 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."

- 2. 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.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

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.

Housing (Scotland) Act 1988, as amended

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

- (a) that the short assured tenancy has reached its finish;
- (b) that tacit relocation is not operating; and

F6(c). REPEALED.

(d) that the landlord or, where there are joint landlords, any of them has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

- (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than **[F8]two** months six months, that period;
- (ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

D REASONS FOR DECISION

1. The application, as amended by the Applicant, is made under Rule 66 of the Procedural Rules. Rule 66 (b) (iv) of the Procedural Rules states that such an application must be accompanied by a copy of a notice to quit.
2. The notice to quit provided by the Applicant requires the Respondent to remove from the Property by 10th February 2021.
3. The short assured tenancy agreement states that the tenancy commenced on 11th November 2011 and was to end on 11th November 2012 with provision for it to continue on a month to month basis until notice was given.
4. The notice to quit did not provide notice to the Respondent to remove herself from the Property at an ish date.

5. The Applicant has had an opportunity to provide reasons why she considers the application to be valid and has not done so within the timescale specified.

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.

M. McA.

Legal Member
1st December 2021