

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/EV/19/2197

Re: 59 Oakhill Grange, Jura House, Aberdeen, AB15 5EA ("the Property")

Parties:

Mrs Carole Baillie ("the Applicant")

Mr Colin Gordon ("the Respondent")

Martin & Co Aberdeen (Applicant's Representative)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should not be accepted in accordance with Rule 5 (4) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 66 on 16 July 2019. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:
 - (i) Copy of email to the Respondent setting out main terms of proposed tenancy.

Alan Strain

2. On 17 July 2019 the Application was considered by the Tribunal and a request for further information issued on 17 July 2019. The Applicant was requested to provide inter alia the following:

- (i) Copy of the SAT;
- (ii) AT5;
- (iii) Notice to Quit;
- (iv) Section 11 Notice;
- (v) Proof of service of the Section 11 Notice; and
- (vi) Proof of service of the Notice to Quit and section 33 Notice.

The Applicant was requested to provide the information by 24 July 2019 failing which the application may not be accepted.

3. The Applicant's agents responded on her behalf by email of 22 July 2019. They enclose copy AT6, Notice to Quit; AT5 and Terms of Business for Prospective Tenants. The Tribunal considered the Application again on 6 August 2019 and requested the following:

- i) The SAT;
- ii) Section 33 Notice; and
- iii) Section 11 Notice.

They were given until 21 August to respond. No response was received.

Reasons for Decision

4. The Tribunal considered the application in terms of Rule 5 of the Chamber 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.”

5. An application under Rule 66 requires specified documentation to be lodged with it:

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.

6. In this Application the Applicant's agents have been requested to provide proof of service of the section 33 Notice, Notice to Quit and Section 11 Notice. They were also asked to provide a copy of the Sat and section 33 Notice. They were given a reasonable period of time to do so and have not done so. In accordance with Rule 5(4) of the Tribunal Procedure Rules the Tribunal considers that the Application should not be accepted.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Alan Strain

Legal Member/Chair

Date

2nd September 2019