



**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

143 (1F2) Ferry Road, Edinburgh EH6 4ET

Case Reference: FTS/HPC/EV/20/2312

Thomas Dickson ("the applicant")

Andrew Storar ("the respondent")

1. The First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 2 November 2020 from the applicant’s representatives Braemore Sales and Lettings. The application was made under Rule 65 of the Procedural Rules, application for order for possession in relation to assured tenancies in terms of S 18 of the Housing (Scotland) Act 1988.
2. The application was accompanied by an AT5 form and a tenancy agreement which was on the face of it a Short Assured Tenancy commencing 12 January 2009 with an initial period to 13 July 2009 and thereafter continuing month to month. The application was also accompanied by a Notice to Quit and a S 33 notice both dated 10 March 2020 for a date of 11 May 2020 and confirmation that both documents were served by Sheriff Officers on 11 March 2020. The Tribunal also received a S 11 notice which indicated as the eviction

process S 36 (A) of the Housing (Scotland) Act 2001. No proof of service was provided for this.

3. The application part 5 entry was : “Ground 12: Tenant is in arrears over 3 consecutive months” and a rental statement showing rent arrears was submitted.

4. On 19 November 2020 the Tribunal wrote to the applicant’s representatives as follows:

“1. It appears that you have selected the wrong rule on the Application form Section It also appears that Section 5 contains incorrect /irrelevant information about rent arrears and refers to a ground under the wrong Act. The Application is currently made under Rule 65 but you have not provided an AT6 form containing any grounds of eviction with proof of service. You have provided documents that would tend to suggest that you wish to make an Application under Rule 66, to seek possession at the ish (expiry) of a short assured tenancy.

a) If you do wish to proceed under Rule 65, please provide an AT6 form and proof of service; and provide an amended Application form which specifies the correct ground in Section 5 and that the required documents for a Rule 65 Application are attached and listed in Section 6;

b) Alternatively, if you wish to amend the Application to proceed under Rule 66, please complete an amended application which shows the ground under which possession is sought and has a properly completed section 5 with specification of the basis of the Application. You should also ensure that the required documents for an application under Rule 66 have been provided and are listed in Section 6.

2. You have provided two tenancy agreements, the second of which is a Short Assured Tenancy with a start date in January 2009. The signatures are undated. Please can you provide a signed and dated copy or provide an explanation as to the date of signing.

3. The wrong section has been ticked on the Section 11 form (Scottish Secure Tenancy). Please can you provide a correct form with proof of service.

4. Please provide proof of ownership of the property by the Applicant Thomas Dickson, as title to make this application, such as the Land Register title sheet or a disposition in his favour registered in the Register of Sasines.” The letter stated that the further information should be provided by 3 December 2020.

5. The Tribunal then granted further time to provide the information by 15 December 2020 on request of the representatives. Proof of ownership of the property, a copy of the relevant tenancy agreement, authorisation of the representatives and a replacement application Form E were provided. This new Form E was signed on 15 December 2020 and stated as the relevant rule Rule 66 of the Procedural Rules, being an application for order for possession upon termination of a shot assured tenancy in terms of S33 of The Housing (Scotland) Act 1988 (the Act) and still contained the same information in part 5.

6. On 12 January 2021 the Tribunal again wrote to the applicant’s representatives. This time the Tribunal asked for the information by 26 January 2021 and set out the following:

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

- You have provided an amended application form which confirms that you wish to proceed under Rule 66. However, in the form you still refer to rent arrears and mention ground 12. An application in terms of rule 66 is not based on any grounds and ground 12 (3 months arrears of rent) is from the wrong legislation. The relevant rent arrears grounds under the Housing (Scotland) Act 1988 are 8, 11 and 12. However, in an action under rule 66 the rent arrears are irrelevant. These would be relevant in an application under Rule 65 only.*
- It appears that the Notice to Quit you have submitted is invalid. The date specified in the Notice is 11 May 2020. However, in terms of the tenancy agreement you have submitted the*

ish date would have been 13 May 2020. Please clarify the basis upon which the Tribunal can entertain the application. Alternatively, if you wish to revert to the previous application form and proceed under Rule 65 please provide a copy of the AT6 served on the Respondent. If you have not served an AT6, please advise if you wish to withdraw the application and arrange for service of this notice or confirm if you wish to ask the Tribunal to dispense with the requirement for this notice in terms of Section 19(1)(b) of the 1988 Act. Please note that if you elect to proceed on this basis you will require to satisfy the Tribunal at a hearing or CMD that it would be reasonable to do so. The invalidity of the Notice to Quit might be taken into account in assessing whether it would be reasonable. Please also provide an amended form which refers to the correct possession grounds. You should note that the Tribunal cannot dispense with an AT6 in relation to ground 8. You may wish to take legal advice on this matter. Please reply to this office with the necessary information by 26 January 2021. If we do not hear from you within this time, the President may decide to reject the application.”

7. No further information was received by the Tribunal.
8. 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 in relation to assured tenancies

65. Where a landlord makes an application under section 18(1) (orders for possession) 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;

(iii) the name and address of the tenant; and

(iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b) be accompanied by—

(i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii) a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and

(iv) evidence as the applicant has that the possession ground or grounds has been met; and

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

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.

1. The Applicant had been given ample notice by the FTT of the issues identified regarding problems with the Notice to Quit, the S 11 notice and the completion of the application regarding the ground stated and the wording used.
2. The application at present does not meet the lodging requirements for an application under Rule 66, which is the Rule stated in the amended application, as it was not accompanied by the documents required in terms of Rule 66 (b) (ii) and (iv). The S 11 notice is defective, proof of sending same was not provided and there is no valid Notice to Quit.
3. The S 11 Notice was based on the wrong legislation, namely on proceedings under the Housing (Scotland) Act 2001 for Scottish Secure Tenancies rather than proceedings under the Housing (Scotland) Act 1988 for Assured Tenancies.
4. A Notice to Quit requires to be issued to an ish date of the tenancy. The Short Assured Tenancy submitted in evidence stated as the original ish date 13 July 2009 and thereafter a month to month continuation. The Notice to Quit submitted in evidence

was for 11 May 2020 and thus not for an ish date of the tenancy. No explanation or representations were submitted to state why the Tribunal should find the notice valid in these circumstances. Furthermore the application referred to Ground 12 and not to the expiry of a S 33 Notice as the ground of the application.

5. The original application was made in terms of Rule 65 of the Procedural Rules. The Tribunal went to great lengths to explain what was required if the applicant wished to proceed on that basis. The application as amended is obviously not made under that rule, however, even if one disregarded this, it would not meet the lodging requirements under Rule 65 (2) (ii) and (iii) either. Again the s 11 notice was defective, no proof of service was provided , the ground given in part 5 of the application, ground 12, is not the correct ground under the Housing (Scotland) Act 1988 and the wording does not reflect the wording of any grounds under that legislation. The Notice to Quit was defective as stated above. The application did not contain an AT6 document, which would be required in terms of S 19 of the Act and no application had been made to dispense with the requirement for this notice in terms of Section 19(1)(b) of the 1988 Act although this option was pointed out by the Tribunal.
6. As the lodging requirements for an application under S 33 Notice of the Act and Rule 66 of the Procedural Rules as well as under S 18 of the Act and Rule 65 of the Procedural Rules are not met, it would not be appropriate for the FTT to accept the application. The application is rejected on that basis.

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
1 February 2021