

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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

2 Station Road, Springside KA11 3AZ

**Case Reference: FTS/HPC/EV/19/2760**

**Benedicte Jane Kanjanahoti ("the applicant")**

**David McGregor and Carol Lynn Richmond ("the respondents")**

1. On 4 September 2019 an application dated 23 August 2019 was received from the Applicant. The application was made under Rule 66 of the Procedural Rules being an application for an order for possession on termination of tenancy under S 33 of the Housing (Scotland) Act 1988. The following documents were ultimately lodged in connection with the application:- copy tenancy agreement headed Assured Shorthold Tenancy Agreement/Lease Agreement For letting a residential dwelling dated 3 June 2013 with tenancy duration stated 3 June 2013 to 2 June 2014 and provides in Clause 4 for termination "in accordance of two months notice in advance", AT5, Notice under S 33 of the Housing (Scotland) Act 1988 dated 14 May 2019 for removal date of 14 August 2019, Letter dated 14 May 2019 from Applicant to Respondents dated 14 May 2019, AT6

dated 14 May 2019 stating in part 4 "Proceedings will not be raised before 14/5/19", letter R.B Richards &Co that the Applicant will market the property once the Respondents have moved out. The Grounds stated in the application were confirmed by email from the Applicant on 10 September 2019 as being Grounds 1, 4, 11, 10, 13, 14 and that the property was "let on a short tenancy, which has terminated". A copy S 11 Notice was provided by the Applicant by email on 23 September 2019.

2. The documents are referred to for their terms and held to be incorporated herein.

On 3 October 2019 the First – tier Tribunal (FTT) wrote to the Applicant in the following terms:" Having considered the documentation lodged by you with the application under Rule 66 we require clarification on the following:

1. You have provided a copy of an AT6 form and refer to grounds for eviction under Schedule 5 of the Housing (Scotland) Act 1988. This would indicate that you wish to make the application under Rule 65 rather than under Rule 66. Please confirm if you wish to change the application and amend it to proceed under Rule 65, in which case the application will have to meet the requirements of S 18 of the Housing (Scotland) Act 1988 or confirm you wish to proceed under Rule 66, in which case the only relevant issue will be whether the requirements under S 33 if said Act have been met.
  2. You have provided a document with the reference "Formal Notice to Quit" dated 14 May 2019. This does not state the information prescribed by The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (as amended by the First Tier Tribunal for Scotland Housing and Property Chamber (incidental provisions) Regulations 2019. Please provide the relevant Notice to Quit which meets the legal requirements in terms of the Regulations and provide the proof of service of said Notice to Quit and of the S 33 notice.
  3. The Notice to Quit refers to the tenancy ending on 13 August 2019. Please explain how a tenancy entered into on 3 June 2013 to 2 June 2014 can have as a valid end date of 13 August 2019.
  4. Should you wish to rely on an application in terms of Rule 65 provide proof of the service of the AT6 document and an amended application and an explanation how an AT6 document which is dated 14 May 2019 and states that proceedings will not be raised before 14 May 2019 can be compliant with the requirements of S 19 (3) (b) of the Housing (Scotland) Act 1988. "
3. The Applicant was asked to reply with the require information by 17 October 2019. No reply was received.
4. A further letter in the same terms with a request for the information to be provided by 20 November 2019 was sent to the Applicant on 6 November 2019. The Applicant was advised that if the FTT does not hear from the Applicant by 20 November 2019 "the President may decide to reject the application." Again, no reply was received.

## DECISION

5. 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."*

6. 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.

## **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 [F57notice served on the tenant by the 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; F58...

[F59(v)a copy of the notice given to the local authority by the landlord 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.

### **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; F45...

(iii)the notice given to the tenant under section 33(1)(d) of the 1988 Act; F46...

[F47(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 was advised that the Notice to Quit submitted does not meet the statutory requirements, that the AT6 document did not provide for any notice period and was asked to explain how this could be considered valid, there was no proof of service of the AT6 document, a Notice to Quit or the S 33 Notice.

The application at present does not meet the lodging requirements for an application under Rule 66 (which is the Rule stated on the application) as it was not accompanied by the document stated in Rule 66 (b) (iv) as stated above and did not contain any confirmation of service of the relevant notices. These were requested but not supplied.

The application also does not meet the lodging requirements under Rule 65 (which is the Rule which would be relevant if the Applicant wished to rely on the list of grounds of appeal stated in the original application and the list in their email of 10 September 2019 as it is not accompanied by proof of service of the notices and the AT6 document provides the same date for the date of the AT6 notice and the date entered in part 4 of the document thus not providing any notice period as required in terms of S 19 (3) (b) of the Housing (Scotland) Act 1988.

The Applicant had been given two opportunities to amend the application and lodge the required documents and has not done so. The Applicant had been advised that if they do not reply the application may be rejected

The Applicant has not replied to two letters of the Tribunal asking for further information. As it is not a valid application under either Rule 66 or Rule 65 in its current form 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

3 December 2019