

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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 Rules")

in connection with

61 Newhouse Drive, Kilbirnie, KA25 6EP

Case Reference: FTS/HPC/EV/18/0273

MR COLIN TODD ("the Applicant")

MISS LAUREN TAYLOR ("the Respondent")

The Application was lodged under Rule 66 of the Chamber Procedural Rules on 1st February 2018, being an application by a private landlord for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the Application:

- (i) Copy Notice To Quit dated 22nd November 2017
- (ii) Copy Section 33 Notice dated 22nd November 2017
- (iii) Copy of a Royal Mail Certificate of Posting dated 22nd November 2017 which had the words, and had the words "NOT BEEN SIGNED FOR" written at the top.

A request for further information was issued to the Applicant on 26th February 2018 asking for the Applicant, amongst other things, to be requested to provide evidence of service of the Notice To Quit and Section 33 Notice.

The Applicant responded by letter of 2nd March 2018. He had employed Sheriff Officers to serve the Notice to Quit and Section 33 Notice when he himself had noticed that there was no signature proving receipt of the Recorded Delivery service. This was done by the Sheriff Officers on 9th February 2018. He provided copies of the fresh notices which were served, and these show that the tenant is now required to vacate the property by 24th April 2018. Accordingly those notices are still current and have not yet expired.

DECISION

I considered the application in terms of Rule 8 of the Chamber 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's solicitor, I consider that the application should be rejected on the basis that it is not appropriate to accept it in terms of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

The Notice to Quit and Section 33 Notice on which the Applicant now relies have not yet expired, and will not do so until 24th April 2018. The Application does not therefore meet the requirements of the Housing (Scotland) Act 1988 nor of Rule 66 of the Chamber procedural Rules. It would therefore not be appropriate to accept the Application, and a fresh Application should be made in due course if still required.

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.

A Kelly

Miss Alison Kelly
Legal Member
8th March 2018



