

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

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**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

3 Sark Drive, Troon, Ayrshire, KA10 7JG (House)

**Case Reference: FTS/HPC/EV/21/1656**

**Parties**

**Mrs Fiona Reese (Applicant)**

**Ms Kirsty Shelley (Respondent)**

1. The First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 8 July 2021 from the Applicant. The application is made under Rule 66 of the Procedural Rules, application for recovery of possession under S 33 of the Housing (Scotland) Act 1988 (the Act). In various correspondence the Applicant lodged for the application the following documents: AT5, Short Assured Tenancy Lease, Notice to Leave under S 62 of the Private Housing (Tenancies) (Scotland) Act 2016 dated 6 January 2021, Section 33 Notice dated 6 January 2021 stating as the date on which vacant possession is required is 7 July 2021, AT6 dated 6 January 2021 quoting Ground 1 but stating that

the property is to be sold and giving the first day when the application could be made as 8 July 2021, various recorded delivery slips in copy together with handwritten receipt dates, S 11 Notice and proof of service and a letter to the respondent dated 21 June 2021.

2. As per Clause 2 of the tenancy agreement, the tenancy commenced on 15 November 2016 with an initial end date of 16 May 2017. If not terminated the tenancy is then to continue from month to month with a 2 months minimum notice period.
3. The FTT wrote to the Applicant with requests for further information on 26 July, 5 August, 18 August and 31 August 2021. In the correspondence it was made clear to the Applicant that if he wishes to rely of Rule 66 he had to produce a valid Notice to Quit for the tenancy. The Applicant replied with several emails, essentially directing the FTT back to the Notice to Leave he had lodged.
4. The application documentation, emails, letters of the FTT and the replies and attachments of the Applicant 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**

#### **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 Tribunal of the issues identified regarding problems with the Notice to Quit and the completion of the application regarding the ground stated and the wording used.
2. The Applicant confirmed repeatedly that the application was to proceed under Rule 66 on the basis of the termination of a Short Assured Tenancy in terms of S 33 of the Housing (Scotland) Act 1988. The Applicant was told by the FTT repeatedly that a Notice to Quit as required for lodging such an application had not been submitted.
3. The application does not meet the lodging requirements for an application under Rule 66 because the application is not accompanied by a valid Notice to Quit. The tenancy was not validly terminated by a Notice to Quit. The Tribunal had set out in the letters that the Notice to Leave lodged did not constitute a valid Notice to Quit in terms of the Housing (Scotland) Act 1988 as it was a Notice to Leave issued under different legislation.
4. Rule 66 requires a Notice to Quit to be issued. A Notice to Quit to terminate a Short Assured Tenancy has to be issued to an ish date of the lease and has to be in the prescribed form. This is set out in the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended. The Notice provided by the Applicant does not meet the requirements of said legislation as it does not provide the information set out in the Regulations. The Regulations are referred to for their terms, which are held to be incorporated herein.
5. The Notice to Leave further does not clearly terminate the tenancy to a valid ish date. The ish date of the tenancy under the lease provided would be a 16<sup>th</sup> day of a month following a two months notice period. The only dates included in the Notice to Leave

are the date it was issued and the date of 8 July 2021 entered in part 4. This does not provide the required specification of a date on which the notice is to take effect, being an inchoate date, which is an essential requirement for any Notice to Quit. The lodging requirements in Rule 66 (b) (iv) was not met as there was no valid Notice to Quit.

6. It appears from the correspondence that the Applicant unfortunately mistakenly thought that the Notice to Leave form relevant for tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 and applicable to Private Residential Tenancies could be used as a valid Notice to Quit for a tenancy under the Housing (Scotland) Act 1988. This is not the case. The requirements which need to be fulfilled to terminate a tenancy are different under both Acts. S 33 (1) (a) of the Housing (Scotland) Act 1988 prescribes that the FTT can only make an order to recover possession if the short assured tenancy has reached its finish. Because the Short Assured Tenancy was not terminated by a Notice to Quit it is ongoing and has not reached its finish.
  
7. As the lodging requirements for an application under Rule 66 of the Procedural Rules and the requirement under S 33 (1) (a) of the Housing (Scotland) Act 1988 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 October 2021