

**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

1 Skateraw Torview, Dunbar, EH42 1QR

**Case Reference: FTS/HPC/EV/19/1380**

Sandra Watson ("Applicants")

Elizabeth Sparks ("Respondent")

**BACKGROUND**

1. On 3 May 2019, an application was made by the Applicants under Rule 66 of the Procedural Rules, being an application for order for possession upon termination of a short assured tenancy.
2. The Applicant submitted with the application an incomplete copy of a Minute of Lease which does not show the commencement date and which has as the year on the cover sheet 2010. This document was signed on 2 November 2011 by the Applicant and a Dr Bleddyn Geddes named as the Tenant for the property.
3. The AT5 document lodged referred to a Dr Bleddyn M Gedrych as the prospective tenant and not to the Respondent as the prospective tenant.
4. The application was also accompanied by a copy Minute of Variation between the Applicant and the Respondent dated 17 April 2014 and a Minute of Extension dated 15 August 2018 between the Applicant and the Respondent but not by a tenancy agreement between the Applicant and the Respondent.

5. By letter from the Tribunal dated 20 May 2019 the Tribunal pointed out the discrepancy in the name of the tenant and requested that the Applicant lodge the signing page for the tenancy agreement for the Respondent and any Schedules within 14 days.
6. The Applicant's agents on 20 May 2019 lodged a complete copy of a tenancy agreement between the Applicant and the said Dr Bleddyn Geddes with a commencement date of 1 November 2011. No explanation was provided as to how the tenancy agreement lodged relates to the Respondent.
7. No tenancy agreement between the Applicant and the Respondent for the Property was lodged. No AT5 document addressed to the Respondent was lodged.

## DECISION

1. 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."*

2. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that the application is frivolous or vexatious within the meaning of Rule 8(1)(a) of the Procedural Rules.

### **REASONS FOR DECISION**

3. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.

It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

4. An application in terms of Rule 66 requires "Rule 66 Application for order for possession upon termination of a short assured tenancy states:

"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.”

5. The application did not provide the tenancy agreement or as much information about the tenancy as the landlord can give as required by S 66 (a) (i) and was not accompanied by a copy of the notice given to the tenant under section 33(1)(d) of the 1988 Act as required by Rule 66 (b) (iii).
6. The Applicant had been asked to provide the signing page for the tenancy agreement with the Respondent and any Schedules. The Tribunal had made the Applicant aware of the discrepancy in the documentation and the fact that the document submitted related to a Dr Bleddyn Geddes and not to the Respondent. The required documents have still not been lodged. No explanation was provided as to how the documentation in the name of Dr Bleddyn Geddes relates to the Respondent. Without these documents the application does not meet the lodging requirements.
7. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected. The Tribunal had pointed out the discrepancy in the names of the tenant of the Minute of Lease submitted and the Respondent.
8. The Applicant’s solicitors re-submitted a tenancy agreement in the name of a Dr Bleddyn Geddes as tenant rather than in the name of Respondent as tenant.
9. The Applicant has not provided any information about the underlying tenancy between the Applicant and the Respondent despite having been asked for further information by the Tribunal.
10. Accordingly, for these reasons, this application is rejected upon the basis that the application is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

### **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.

P Hennig McFatridge

Petra Hennig McFatridge  
Legal Member  
5 June 2019