



**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

7 Finedon Terrace, Dundee, DD4 9EF

Case Reference: FTS/HPC/EV/19/1420

Mr William Stewart ("the Applicant")

Mr Darren Smith ("the Respondent")

The Application was lodged under Rule 66 of the Chamber Procedural Rules on 9th May 2019, 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 Lease
- (ii) Form AT5
- (iii) Section 33 (1) (d) Notice
- (iv) Notice to Quit
- (v) Notice Given to Local Authority
- (vi) Proof of Service of Notices

The Tenancy Agreement shows that the lease began on 1st June 2017, and ran until 2nd December 2017. The Agreement states that if it is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated by either party giving no less than two months' notice to the other party. The Agreement therefor tacitly relocates on a monthly basis.

The Notice To Quit and Section 33 Notice are both dated 27th February 2019, and both give the termination date as 7th May 2019. Unfortunately the 7th of the month is not an ish date in terms of the Agreement, and therefore the notices are incompetent.

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 I consider that it 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 are both dated 27th February 2019 and both give the termination date as 7th May 2019. This date is not an ish date in terms of the tenancy and therefore the notices are incompetent.

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
20th May 2019