



**DECISION AND STATEMENT OF REASONS OF STEVEN QUITHER, 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

FLAT 1/1, 764 POLLOCKSHAWS ROAD, GLASGOW G41 2AE ("the Property")

Case Reference: FTS/HPC/EV/19/1897

MOHAMMED ALAM, 738 POLLOCKSHAWS ROAD, GLASGOW G41 2AE ("the Applicant")

**JANETTE ROSS, FLAT 1/1, 764 POLLOCKSHAWS ROAD, GLASGOW G41 2AE
("the Respondent")**

DECISION

After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

BACKGROUND

1. On 19 June 2019, an application was received from the Applicant under Rule 65 of the

Procedural Rules being an application for possession on termination of an Assured Tenancy

The following documents were enclosed with the application:-

- “EVICTION NOTICE COPY” (sic) which, as best I can understand, appeared to be Notice to Quit and Notice under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), both dated 9 January 2019;
- Form AT6 dated 1 April 2019;

Tenancy Agreement, commencing 30 April 2010 and continuing initially till 30 April 2011, together with form AT5 dated 30 April was thereafter sent but the Applicant’s former agents (1st Lets Glasgow Ltd, 2 Calder Street, Glasgow).

After sundry correspondence, Notice under Section 11 of the Homelessness etc Act 2003 was also produced by the Applicant, apparently dated 6 August 2019.

By letter of 5 August, this tribunal sought proof of service on the Respondent of said s33 Notice, AT6 and Notice to Quit.

By e-mail of 18 August, the Respondent advised these had been sent by “the agency” (presumably 1st Lets). However, he did not produce any type of certificate of service from them vouching this. He also advised that he had “resent the three documents” to the Respondent again on 6th August. In the context, I have taken this to refer to the 2 Notices and AT6 above referred to.

By subsequent e-mail of 22 August, the Respondent advised the original Notice to Quit from January had been hand delivered to the Respondent and attached an e-mail from 1st Lets by way of confirmation.

By letter of 2 September, this Tribunal sought further clarification regarding service of the Notice to Quit and AT6 in January, as well as the later, August AT6.

By e-mail of 5 September, the Respondent sent details of a Royal Mail tracking number regarding the “original” AT6, which appeared to be different from the one lodged with the application. Again, however, there was no confirmation as to what this related and no mention of it relating to the “original” Notice to Quit.

Further clarification was again sought by letter of 24 September to which the Applicant has responded by way of 2 e-mails of the same date pointing out, properly, that the Notice to Quit from January has already been provided but, again, failing to provide any certificate of service.

Accordingly, there does not appear to be any proof of service of the Notice to Quit in January, beyond 1st Lets' advices that it was hand delivered by them on 9 January.

2. Rule 8 of the Procedural Rules 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."

REASONS FOR DECISION

3. The Applicant seeks to recover possession of the property on the basis of various Grounds of the 1988 Act.

4. The Tenancy Agreement between the parties appears to have been a Short Assured Tenancy commencing 30 April 2010, as above narrated and continuing initially till 30 April 2011. The tenancy clearly continued beyond this original termination date, presumably by tacit relocation and until such time as to be sought to be brought to an end by these proceedings.
5. By correspondence as above narrated, the Tribunal requested further information and clarification in respect proof of service of the various notices upon which the application proceeds, most notably the Notice to Quit. Despite several requests having been made, no Certificate of Service has been produced regarding service of this notice in January. I am not convinced that hand delivery by agents amounts to valid service (*Govan Housing Association v Kane* 2003 Hous LR 125, *City of Edinburgh Council v Smith* [2016] SC EDIN 42). Since the tenancy agreement itself does not clarify the grounds upon which it might be terminated, service of a Notice to Quit is essential for the application to proceed and this does not appear to have been validly done.
6. Accordingly, I consider it is not appropriate to accept the application, which I now reject, on the basis that an essential step necessary for the application to proceed has not been complied with and no satisfactory explanation has been provided in relation to same.

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.

SR QUITHER
Legal Member

GLASGOW
25 SEPTEMBER 2019