

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

23 West Avenue, Uddingston, G71 6HB

Case Reference: FTS/HPC/EV/19/3447

Colin Adams ("the applicant")

Lisa Munro ("the respondents")

1. On 28 October 2019 an application form E was received from the Applicant. The application was made under Rule 65 and stated as the Grounds of Eviction "Ground 8 : at least 3 months rent arrears Ground 10: Tenant was given an notice to quit which has expired and yet has stayed on". This was accompanied by a Notice to Quit dated 8.5.2019 to a date of 8.7.2019, a rent statement, a S 33 Notice dated 6.7.2019 for a date of removal on 8.7.2019, certificate of posting of 26.4.2019 and a S 11 Notice to North Lanarkshire Council with email confirmation dated 23.10.2019 and a copy of the tenancy agreement for the property.
2. By letter dated 30.10.2019 the Tribunal requested submission of an AT6 document.

The Applicant on 30.10.2019 replied "I have made an error on the application, I should have stipulated Rule 66 not Rule 65."

3. The Tribunal on 1.11.2019 then requested a copy of the AT5 document. The Applicant submitted a copy of an AT5 document, which did not bear the signature of the tenant.
4. On 21.11.2019 the Tribunal requested further information concerning the Notice to Quit, which sought to terminate the tenancy on 8.7.2019 although the initial ish date of the tenancy as per Clause 4 of the tenancy agreement was stated as 30 April 2018 with a provision "if the agreement is not brought to an end by either party on the above date, it will continue thereafter on a monthly basis until terminated by either party giving no less than 2 months notice."
5. The Tribunal also requested clarification of the dates in the S 33 notice, which was dated 6.7.2019 giving only 2 days to 8.7.2019 and queried the dates on the post office receipt of 26.4.2019 as this predated the Notice to Quit and the S 33 notice dates.
6. On 3.12.2019 the Applicant provided a different Notice to Quit document dated 15.5.2019 giving notice to 12.7.2019 with Sheriff Officers confirmation of service on 18.5.2019 and a different S33 notice dated 15.5.2019 for a date of termination on 12.7.2019 with Sheriff Officers confirmation of service on 18.5.2019.
7. On 17.12.2019 the Tribunal asked the Applicant to provide further information by 31.12.2019 namely an explanation of the date on the Notice to Quit of 12 .7.2019 when the ish date stated on the tenancy agreement was initially 30.4.2018 with a continuation from month to month and querying why the Applicant considered the S 33 notice to be valid although it gave less than the 2 months notice required by S 33 (2) of the Housing (Scotland) Act 1988.

8. No reply was received by 31.12.2019. The Tribunal on 14.1.2020 gave the Applicant a further chance to reply by 28.1.2020 and advised him "Please respond to the Tribunal's letter dated 12 December 2019 failing which the Application will be rejected". No reply has been received.
9. The documents 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 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.

The Applicant had been given ample notice by the Tribunal of the issues identified regarding the documents produced with the application and chose not to make representations

regarding the dates as stated above. He had been advised on 14.1.2020 that the application would be rejected should he not respond to the Tribunal's request for further information.

The application at present does not meet the lodging requirements for an application under Rule 66 (which is the Rule stated in the email by the Applicant dated 30.10.2019) as it was not accompanied by the documents stated in Rule 66 (b) (iii) and (iv) as stated above.

The Tribunal considers that the requirement for lodging the documents stated in Rule 66 (b) (iii) and (iv) refers to a requirement to lodge notices that are valid.

The S 33 Notice was served on the Respondent on 18.5.2019 and stated as the date the Respondent was required to remove from the property on or before 12.7.2019. S 33 (2) of the Housing (Scotland) Act 1988 stipulates as the notice period to be given either; *"(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period ; (ii) in any other case, two months. "* The period stated in the S 33 notice served is less than two months and thus does not comply with the statutory requirement. No valid S 33 Notice was lodged in this case.

The Notice to Quit served on 18.5.2019 states as the date 12.7.2019. This is not an ish date. The tenancy agreement states that the tenancy was for an initial term of 6 months from 1.5.2017 to the end date of 30.4.2018 with a continuation on a monthly basis until terminated by either party giving no less than 2 months notice to the other party. As the tenancy continues from 30.4.2018 from month to month the date of 12.7.2019 is not an ish date for the tenancy and the notice cannot terminate the tenancy to that date. The Notice to Quit is not a valid Notice to Quit.

The application thus did not include a valid S 33 Notice and Notice to Quit and thus did not fulfill the lodging requirements set out above.

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-McEatrige
Legal Member
5 February 2020