



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER
Q.C., LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017
Rules")**

in connection with

Ref: FTS/HPC/EV/20/2606

146 Izatt Avenue, Dunfermline, Fife, KY11 3BB ("the Property")

**Trustees of Patricia Richards Personal Injury Trust 7th Floor, Delta House, 50
West Nile Street, Glasgow, G1 2NP ("the Applicant")**

**Stevenson & Marshall, 41 East Port, Dunfermline, Fife, KY12 7LG ("the
Applicant's Representative")**

**Miss Leanne McLaughlin 146 Izatt Avenue, Dunfermline, Fife, KY11 3BB ("the
Respondent")**

DECISION

**It was determined by the Legal Member acting under the delegated powers
of the Chamber President, in terms of 8 of the 2017 Rules that there was a
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,
therefore the Application must be rejected in terms of Rule 8(1).**

REASONS

- 1. An application dated 16 December 2020 was received from the Applicant's
Representative ("the Application"). The Application was made under Rule 66 of
the 2017 Rules, being an application by a landlord for an order for possession on
the termination of a short assured tenancy. The Applicant's Representative**

submitted a paper apart and with the Application.

2. An application made in terms of Rule 66 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.”

3. On 8 January 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

“Before a decision can be made, we need you to provide us with the following:

1. You are relying on S33 of the Housing Scotland Act 1988 and you have provided a Notice to Quit which purports to terminate the tenancy by asking the tenant to leave by 13th April this does not appear to be an ish date as the termination date in the lease is 4th June 2017 and monthly thereafter. Please advise why given this, you think this notice to quit is valid in bringing the tenancy to an end?

2. With regard to the S33 notice it refers to the tenant being required to leave by 13th February whereas it is dated 11th February and was sent to the Tenant on 11th February from the RD slip submitted – can you please confirm why you think this is a valid S33 notice if it has not given at least 2 months’ notice?

3. You have provided evidence of service of the Notice to Quit and the S33 notice can you please provide evidence of the receipt of the notices by the tenant e.g. track and trace or delivery receipt?

Please reply to this office with the necessary information by 22 January 2021. If we do not hear from you within this time, the President may decide to reject the application.”

4. On 22 January 2021, the Applicant’s Representative responded as follows:

“Dear Sirs,

We refer to your letter of 8th January 2021 and write to provide the further information as requested. This is set out below:

- 1. Two months’ notice has been given*
- 2. We await confirmation by email from the original agents who were instructed to serve the Notice to Quit and s33 Notice. It has been confirmed by telephone that it is noted in error that the tenant was required to leave was noted in error as 13/02/2020 rather than 13/04/2020. It is confirmed by the original agents that this was a simple error and should have been noted “04” rather than “02”*
- 3. Copy evidence attached with regards to track and trace delivery confirmation.*

Please advise if any further information is required at this stage.”

5. On 28 January 2021, the Application and further information provided was considered by a legal member acting under the delegated powers of the Chamber President. A letter was sent in the following terms:

“We refer to our letter of 8 January in which further information was requested and your response of 21 January 2021.

In relation to point 3, proof of service of the Notice to Quit and Section 33 Notice is acknowledged.

Further information is required to enable your application to be considered.

- 1. You have not addressed the issue which was raised at our point 1 in relation to the notice to quit not specifying an ish date (the short assured tenancy agreement specifies 4th of each calendar month.)*
- 2. Your comments and the fact that you are awaiting information from the previous agents are noted.*

In light of your responses to the above two points and to the mandatory requirements for an application in terms of Rule 66, under Section 33 of the Housing (Scotland) Act 1988: (i) Please provide legal submissions with reference to supporting authority as to whether the notice to quit is valid, having regard to the two points which have been identified; or (ii) if it is accepted that the notice to quit is not valid, please provide legal submissions with reference to supporting authority as to why the application should be entertained in the

absence of a valid notice to quit.

Please provide the further information by 11 February 2021 otherwise the Application may be refused; or please confirm whether you wish to withdraw your application.”

6. The Applicant's Representative did not reply to the further request for information.
7. On 25 February 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.
8. Rule 8 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."

9. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's Representative's failure to respond to the most recent request, it was determined that the requirements for making an application under Rule 66 have not been met. At the time at which it was made, the Application did not meet the requirements for

making an Application in terms of Rule 66. The Applicant's Representative has failed to respond to some matters raised in the tribunal's further information requests. The Applicant's Representative has not provided the required information within the stipulated timescales. The Notice to Quit which has been provided does not appear to be valid as it does not specify an ish date; there is an issue over the dates in the Section 33 notice which has not been addressed with reference to legal authority and no legal submissions have been advanced on behalf of the Applicant as to why the Application should be entertained in those circumstances. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

10. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

25 February 2021