



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case reference FTS/HPC/EV/22/1006

Parties

Mrs Brenda Ettershank (Applicant)

Miss Rosleen Newins (Respondent)

11 Finlow Place, Dundee, DD4 9NB (House)

Tribunal Member: Jacqui Taylor (Legal Member)

The Tribunal rejects the application by the applicant dated 5th April 2022, being an application for eviction. The Tribunal administration sent the Applicant an email dated 26th April 2022, which requested further information to enable the application to be processed. In response the Applicant sent the Tribunal Administration an email dated 10th May 2022, in the following terms:

- 1. Unfortunately I have made an error on the grounds. It should be Ground 3 “The house is let under a tenancy for a specified period not exceeding 8 months and (a) not later than the date of commencement of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered under this ground.*
- 2. Full AT6 to follow on part 2 of this email.*
- 3. Notice to quit to follow on part 2 of this email.*
- 4. The notice to quit was served by recorded delivery. I do not have the receipt of the payment.*

5. *S11 notice proof - I shall forward a copy of the email to you.*

Ground 3 of Schedule 5 of the Housing (Scotland) Act 2008 is in the following terms:

'The house is let under a tenancy for a specified period not exceeding eight months and—

(a)not later than the date of commencement of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered under this Ground; and

(b)the house was, at some time within the period of 12 months ending on that date, occupied under a right to occupy it for a holiday;

and for the purposes of this Ground a tenancy shall be treated as being for a specified period—

(i)not exceeding eight months, if it is determinable at the option of the landlord (other than in the event of an irritancy being incurred) before the expiration of eight months from the commencement of the period of the tenancy; and

(ii)exceeding eight months, if it confers on the tenant an option for renewal of the tenancy for a period which, together with the original period, exceeds eight months, and it is not determinable as mentioned in paragraph (i) above.'

The Short Assured Tenancy submitted with the application states that the tenancy is for the period 1st February 2017 to 1st August 2017 and if the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until ended by either party. The tenancy agreement is for a period exceeding eight months and no evidence has been provided that the tenancy is a holiday let. Consequently Ground 3 is not available to the Applicant.

Separately, even if the application was amended to seek eviction of the grounds of termination of a short assured tenancy, the Section 33 Notice is dated 24th August 2021 and it states that vacant possession is required on 30th August 2021 and that the tenant is required to remove on 1st March 2022. The date of 30th August 2021 does not give the tenant the required period of notice. Also no evidence of service of the section 33 notice has been provided.

Accordingly the Tribunal has good reason to believe that it would not be appropriate to accept the application and rejects the application in terms of rule 8 (1)(c) of the Tribunal Rules.

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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

J Taylor

.....Legal Member

Date: 26th May 2022