



**DECISION AND STATEMENT OF REASONS OF MARTIN J.MCALLISTER
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

29 Dean Park, Newtongrange, EH22 4LX ("the Property")

Case Reference: FTS/HPC/EV/22/2214

Eric Davidson ("**the Applicant**")

KCLS Property Management ("**the Applicant's Representative**")

Lorna McGregor Mountford Dickson ("**the Respondent**")

1. An application, dated 1st June 2022, was received from the Applicant's Representative by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT). It was not clear from the application which Rule the application was under but it purported to be for an order of eviction
2. The Application referred to a ground of Possession under the Private Housing Tenancies (Scotland) Act 2016 and stated that it was under "Ground 5. The Landlord's family member intends to live in the let property. Due to family bereavement the landlord requires the property back to move a family member in."

3. The Applicant's Representative submitted a copy of a Notice served under Section 33(1) (d) of the Housing (Scotland) Act 1988 ("the 1988 Act") dated 9th March 2022 which stated that recovery of the Property was required by 30th May 2022 as this was " the termination date"
4. The Tribunal wrote to the Applicant's Representative on 10th August 2022 seeking further information:
 - 4.1 It was suggested that, since the tenancy is a short assured tenancy, the application should be amended to reflect a valid ground of possession under the 1988 Act.
 - 4.2 The Tribunal sought a copy of the AT6 Form which had been served together with evidence of service.
 - 4.3 If the application was to be under Rule 66, the Applicant's Representative was invited to amend it so that it referred to Section 33 of the Act.
 - 4.4 The Applicant's Representative was asked to address the issue that the Notice to quit did not provide the Respondent with six months' notice which was a requirement for those served prior to 30th March 2022. It was suggested that the application might be withdrawn and resubmitted in September 2022 when the six months' period of notice had expired.
 - 4.5 The Applicant's Representative was asked to provide evidence that the appropriate notice had been given to the local authority in terms of the Homelessness etc, (Scotland) Act 2003
5. The Applicant's Representative responded on 23rd August and did not address

the matters raised in the Tribunal's letter of 10th August 2022 but did submit an undated application form which indicated that it was under Rule 66 – possession of a property on termination of a tenancy under Section 33 of The Housing (Scotland) Act 1988. The application also contained a reference to Ground 5 and the Property being required for a family member.

DECISION

6. I considered the application in terms of Rules 5 and 8 of the Procedural Rules.

Rule 5 provides

(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

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."

- 7. After consideration of the application, the attachments and correspondence from the Applicant, I consider 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

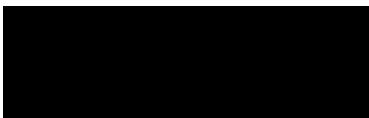
8. It is not clear under which ground(s) the Applicant seeks possession of the Property. The Property is let under a short assured tenancy yet reference is made in the application to Ground 5. Ground 5 of Part I of Schedule 5 to the 1988 Act refers to a property being held for the purpose of being available for occupation of a minister or a full-time lay missionary of any religious denomination. Clearly that is not relevant to the Property. It is believed that the Applicant was referring to Ground 5 of Part I of Schedule 3 of the 2016 Act which is clearly irrelevant given that the tenancy in question is a short assured tenancy.
9. The Application was accompanied by a Notice to Quit which purported to bring the tenancy to an end on an ish date. It is dated 9th March 2022 and states the termination of the tenancy to be on 30th May 2022. In terms of the Coronavirus (Scotland) Act 2020, the appropriate period of notice for bringing a tenancy to an end under Section 33 of the 1988 Act was six months.
10. No adequate notice had been given to the tenant. The application is confused and does not refer to a valid ground for possession. In addition, no AT6 Form has been produced and no evidence that the local authority has been given notice of proceedings in terms of Section 11 of the Homelessness etc (Scotland) Act 2003.
11. The Applicant had failed to provide information having been required to do so in terms of Rule 5 (3). The information requested was essential for the Tribunal to make a decision as to whether or not to admit the application for determination.

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.



Martin J. McAllister,
Legal Member
First-tier Tribunal
16th September 2022