



**DECISION AND STATEMENT OF REASONS OF JAN TODD, 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

Case Reference: FTS/HPC/EV/23/2496

Mr Neil Souter (Applicant)

Miss Rachel Gibson (Respondent)

11A Bridgefield, Stonehaven, Aberdeenshire, AB39 2HY (House)

1. On 24th July 2023, an application was received from the Applicant. The Application was made under Rule 66 of the Procedural Rules, being an application for eviction in relation to a possession on termination of tenancy in terms of S33 of the Housing (Scotland) Act 1988. (the 1988 Act) The following documents were enclosed with the application:-

- Copy Assured Tenancy Agreement between the parties with a start date of 18th February 2017 and an end date of 18th August 2017.
- AT5 notice dated 18th February 2017
- Copy Notice to Quit dated 14th April giving notice to Quit by 18th July 2023
- S33 notice dated 14th April giving notice to leave by 18th July 2023
- Proof of posting dated 28th April 2023

2. The Tribunal wrote to the Applicant on 7th August 2023 saying:-

"A Legal Member of the Tribunal with delegated powers of the President has considered your application. Please note the following

1. As previously requested, please provide a copy of the section 11 Notice with evidence that it was sent to the Local Authority. This was not submitted with the application.

2. Please clarify the basis of the application. You have referred to Rule 66 and submitted a section 33 Notice but in the application form you refer to two eviction grounds from the 1988 Act and one which does not apply to this type of tenancy. If you are proceeding on the basis of the section 33 Notice please provide an amended application form with the grounds removed.

3. Please provide evidence which shows how and when the Notices were served. The documents lodged do not clearly show this. Please note that ordinary post is not a valid method of service.

4. The Notice to quit lodged appears to be invalid as the date specified does not coincide with an ish. The term of the tenancy is 18/2/17 to 18/8/17. There is no provision for it to continue on a month to month basis so the ish dates appear to be the 18 February and August each year. The date specified in the Notice is 18 July. Please clarify the basis upon which the application can be accepted. You may wish to take legal advice before you respond Please respond within 14 days or your application may be rejected"

3. The Applicant responded by e-mail dated 24th August confirming

"Dear Sir I think we will withdraw this application, and seek more advice. Since we have previously been told by our letting agent that all necessary paperwork had been sent to yourselves. We understood section 11 was sent to Aberdeenshire Council, Woodhill House, Aberdeen. The notices served, were signed for by the tenant, as the letting agent staff member had to hand deliver it as the tenant does not sign anything from the post office, recorded post or special delivery. How else can we provide evidence? We would like tenant evicted, as a family member is looking to move in. "

4. The Tribunal sought to clarify if the Applicant was withdrawing this application and by asking on 29th August 2023 "The legal member asks you to confirm you are

withdrawing this application as your email is unclear. Please confirm the position by 12 September 2023, failing which the application may be rejected. "

5. The Applicant replied on 5th September stating "*Dear Sir We have sent you all the paperwork we have, our leasing agent says that everything required has been sent to you , to carry out the eviction. Please carry on with this application if you can.*".
6. The issue that appears to the Tribunal to be fundamental and fatal to this application is the question of the date specified in the Notice to Quit which is not an ish date of the tenancy. In addition, the Applicant has not responded substantively to the Tribunal's requests on 7th August for a s11 notice and evidence of delivery or evidence of a competent method of service of the notice to quit and s33 notice.

DECISION

7. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

8.

"Rejection of application

Rule 5 (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 made on the date that the First Tier Tribunal

receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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 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) (a) and (c) of the Procedural Rules.

REASONS FOR DECISION

10. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
11. the following issues have been identified in the paperwork submitted:-The Notice to Quit does not specify a valid ish date. The tenancy states that the term is from 18th February 2017 to 18th August 2017 which is for 6 months and there appears to be no provision for it to continue on a monthly basis thereafter. In the absence of any provision in Tenancy Agreement to the contrary it is assumed tacit relocation is in operation. This means the ish date is 18th August and 18th February in each year and the Applicant having given a Notice to Quit with an ish date of 18th July 2023 has failed to validly terminate the contractual tenancy, July not being a monthly date on which the tenancy automatically renews if not validly terminated. The termination on a valid ish date is an essential requirement of any application relying on s33 of the Housing (Scotland) Act 1988 as the contractual tenancy has to be brought to an end.
12. S33 of the 1988 Act states in subsection 1 "(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal [may] 2 make an order for possession of the house if the Tribunal is satisfied—
(a) that the short assured tenancy has reached its ish;
(b) that tacit relocation is not operating; [...]**3**
(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house [, and] **4**

(e) that it is reasonable to make an order for possession.]4

It is a fundamental and well established rule of property law that a notice to quit must be served referring to a valid ish date and if it fails to do so it is invalid and does not operate to stop tacit relocation. Given the notice to quit in this application is not valid and does not terminate the tenancy and stop tacit relocation it does not meet the requirements of s33 and must be rejected. In addition, the Applicant has failed to provide a s11 notice or answer the further queries regarding the grounds referred to in the application or how the notices were served.

After consideration of the application, the attachments and correspondence from the Applicant the Legal Member considers that the Application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1) (a) and Rule 8(1) (c) of the Rules.

13. Accordingly, for this reason, this application must be rejected upon 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)(a) and (c) of the Procedural Rules.

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.



Jan Todd
Legal Member
26th September 2023

