



**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

Case reference FTS/HPC/EV/22/3266

Parties

Mr John Standaloft (Applicant)

Ms Susan Strang (Respondent)

Fife Properties (Applicant's Representative)

5 Maple Gardens, Methil, Fife, KY8 2HJ (House)

1. On 7.9.2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 66 of the Procedure Rules from the Applicant. The application was accompanied by a Tenancy Agreement, an AT5 document, an AT6 document, a Notice to Quit document dated 30.5.2022 to the date of 4.8.2022, a

letter which may have been intended as a S 33 document dated 30.5.2022 with no date by which the tenant is to remove from the property and a cover letter dated 30.5.2022.

2. On 12.10.2022 the FTT wrote to request further information in the following terms: Before a decision can be made, we need you to provide us with the following: 1. The Notice to Quit does not appear to have been served to an ish date of the tenancy. Please provide your written representations on the validity of the Notice to Quit. 2. The document which appears to be a section 33 notice is incomplete as crucial dates have been excluded. Please provide your written representations on the validity of the notice. For the above reasons, you may wish to consider withdrawing the application and serving the correct notices. Otherwise, it is also noted that: 3. A Form AT6 is not required for a Rule 66 application. 4. We require a proper address for the Applicant. A care of address is not acceptable. 5. The Title Deed indicates a joint owner at the time of registration. If there is still a joint owner, please confirm whether she is to be a joint Applicant, or provide her written authorisation to the Applicant letting the property and making this application in his sole name. 6. Please provide written authorisation from the Applicant(s) authorising you to act on their behalf in this application. 7. You have not provided a section 11 notice which is required to be served upon the local authority. Please provide the notice together with evidence of service. 8. You have not provided evidence of service of the notices upon the Respondent Please reply to this office with the necessary information by 26 October 2022. If we do not hear from you within this time, the President may decide to reject the application.
3. No reply was received. By letters dated 1.12.2022 and 6.1.2023 the FTT again requested the same information.
4. No reply was received.
5. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 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

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; and

(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

and

(c) be signed and dated by the landlord or a representative of the landlord.

1. The decision is made on the basis that the application was made under rule 66. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application requires the tenants to quit the premises on 4.8.2022. The tenancy agreements shows as the relevant ish date the 2nd day of any month of the year. The Notice to Quit must be to an ish date. A request for submissions was issued and not answered. I consider that the application is not accompanied by a valid Notice to Quit as required in Rule 66 (b) (iv) of the Procedural Rules. The Notice to Quit was not to an ish date and thus invalid. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
2. Rule 66 (b) (iii) requires that an application is accompanied by the s 33 notice. This would have to be valid to be a notice which could be considered to fulfill that requirement. A document referred to in the cover letter as a S 33 notice was included with the application but does not given the date by which vacant possession is required. This was simply left blank. This document does not constitute a valid S 33 notice.
3. Rule 66 (b) (v) requires that an application is accompanied by the Notice given to the Local Authority in terms of S 11 of the Homelessness (Scotland) Act 2003. This was not provided.
4. The Applicant had been given ample opportunity to provide the missing information and documentation and simply did not reply to any of the letters from the FTT requesting this. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit, S 11 notice and without the required S 33 notice. The lodging requirements for such an application have not been met. The application in terms of rule 66 is thus rejected.

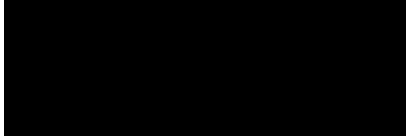
What you should do now

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 McFatridge
Legal Member
13 February 2023