



**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

129 Victoria Road, Dunoon, Argyll, PA23 7NU24 Alexander Drive, Aberdeen, A

Case Reference: FTS/HPC/EV/21/1300

Parties

Mr Gordon Gilmour, Mrs Carol Gilmour ("the applicant")

Mrs Eowyn Wilson ("the respondent")

Argyll Housing Services (applicant's Representative)

1. The First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 28 May 2021 from the applicant's representatives on 31 May 2021. The application was made under Rule 65 of the Procedural Rules, application for order of possession under S 18 of the Housing (Scotland) Act 1988 (the Act). It was accompanied by Application, AT5, Short Assured Tenancy Lease, Notice to Quit dated 12 November 2020 not giving a date on which the tenant is required to quit the property, Section 33 Notice dated 12 November 2020 stating as the date on which vacant possession is required 15 March 2021 and Section 11 Notice. No AT 6 document was provided.
2. The tenancy agreement shows the tenancy period in clause 1 as "*the tenancy will commence on:7/3/2017 and end on: 24/9/2017. If the agreement is not brought to*

an end by either party on the end date, it will continue on a monthly basis thereafter until ended by either party”

3. On 17.6.2021 the Tribunal wrote to the applicant’s representative and asked for the following information by 1.7.2021: *1. Can you please provide a written authority from the applicant consenting to you acting as their representative? 2. Can you please provide the assignation of the tenancy from the joint tenant as you mentioned? 3. Can you please advise if there is another Notice to Quit as the one forwarded appears to mention a Notice to Quit enclosed and also that notice does not contain a date by which the tenant is required to leave and which must be an ish date to be valid? Without this the Notice to Quit would appear to be invalid but please let us have your comments or the additional notice referred to in this one? 4. Please provide evidence of how and when the notice to quit and S33 notice were served on the tenant? 5. Please provide a full s11 notice the version you have sent does not mention what kind of tenancy the notice refers to which is usually set out in the standard form? 6. Finally can you please advise if the landlord is registered as a search of the landlord registration has not produced details of their registration? Please provide a landlord registration number or advise if they are not registered?*
4. The reply was as follows: *“In reply to your letter of 17June. Please find detailed below my responses to your Queries Initially please find attached a letter From the Gilmour’s authorising me to act on their behalf. The Gilmour’s have confirmed their registration details as 449287/130/07591 & 449288/130/07031. I have attached is a copy of the Assignation which removed Mr Wilson to put the tenancy in Ms Wilson’s name only. I have also attached details of proof of delivery. I wasn’t sure about your query concerning the Notice to the Local Authority under Section 11 of the Homeless (Scotland) Act 2003. This is based on the form used by Argyll and Bute and includes details of the grounds for Repossession as the tenancy having reached its “Ish” Date. I would consider that as the residential tenancy started on 17 March 2017 it was safe to assume it was a Short Assured Tenancy. I have had several conversations with the local Homeless Person’s Unit and have liaised with them over Ms Wilsons case and they have not queried the content of the Notice or it’s structure. I have attached a copy of the Notice served at the same time as the Section 33 Notice. I hope this will be sufficient but please do not hesitate to get back to me if you require any further*

information.and monthly thereafter.” An authorization letter from the applicants, another copy of the S 33 Notice and the recorded delivery slip dated 12.11.2020 with track and trace receipt of 13.11.2020 was enclosed.

5. On 16.7.2021 the Tribunal again wrote to the applicant’s representative in the following terms:” *1. You state in the application that you are applying under Rule 65 but then you state in the application that a Short Assured Tenancy has come to an end. Please clarify under which Rule you wish to proceed 2. If it is under Rule 65 please provide the Notice to Quit terminating the tenancy to a valid ish date and AT6 document and provide evidence of the ground of eviction. 3. If it is under Rule 66 please amend the application accordingly and provide the Notice to Quit. So far you have submitted a document headed Notice to Quit which does not state the date for which the notice is given. The enclosure of a S 33 notice does not remedy the lack of a termination date in the Notice to Quit as a S 33 notice does not have to be given to an ish date whereas a Notice to Quit does. 15 May 2021 is not an ish date of the tenancy according to the tenancy agreement lodged. Please now submit a valid Notice to Quit or consider withdrawing the application. Without a valid Notice to Quit the application will have to be rejected.”* The Tribunal advised that prior to sending a reply, legal advice might best be sought.
6. The following reply was received on 30.7.2021:” *As a result of seeking legal advice, please find attached the submission which has been adjusted to show that that the application is under Section 66. With regard to the Notice to Quit I would ask that you consider that it was served at the same time as the Section 33 Notice and as such it is quite clearly associated with the tenancy being brought to an end as a result of the “ish” date. Likewise, the period was again tied into the notice. “* Attached to the email was the same application initially made, again stating the application was made under rule 65 and again stating in part 5: “The Short Assured Tenancy has come to an end”
7. The documents are referred to for their terms and held to be incorporated herein.

DECISION

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."

After consideration of the application, the attachments and correspondence from the Applicant, the Tribunal considers 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

Relevant Rules of Procedure:

Application for order for possession in relation to assured tenancies

65. Where a landlord makes an application under section 18(1) (orders for possession) 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;
- (iii) the name and address of the tenant; and

- (iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;
- (b) be accompanied by—
 - (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
 - (ii) a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy;
 - (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and
 - (iv) evidence as the applicant has that the possession ground or grounds has been met; and
- (c) be signed and dated by the landlord or a representative of the landlord.

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;
 - (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.

1. The Applicant had been given ample notice by the Tribunal of the issues identified regarding problems with the Notice to Quit and the completion of the application regarding the ground stated and the wording used.

2. The application at present does not meet the lodging requirements for an application under Rule 66 because the application clearly states it is made under rule 65 and because the application is not accompanied by a valid Notice to Quit. The tenancy was not validly terminated by a Notice to Quit. The Tribunal had set out in the letters that the Notice to Quit lodged did not state a date and thus did not give the respondent the required information as to when the tenancy was supposed to end. The answer on 30.7.2021 appears to argue that because the Notice to Quit was sent with the S 33 Notice it would be clear to which tenancy it related and should be read in conjunction with the S 33 Notice. Even if this was to be the case, the date stated in the S 33 Notice, namely 15.5.2021 is not an ish date and thus, even if one was prepared to read that date into the blank Notice to Quit, the Notice to Quit would not have terminated the tenancy to a valid ish date. The ish date in terms of the tenancy agreement clearly is the 24th day of the month, not the 15th. The application was never formally amended to Rule 66. The lodging requirements in Rule 66 (b) (iv) was not met as there was no valid Notice to Quit.
3. The application cannot proceed under rule 65, which is the rule stated on the application, because no AT6 document was ever submitted and the Notice to Quit provided again could not be considered valid for the reasons stated above. The application is not a valid application under Rule 65 because the lodging requirement under Rule 65 (b) (ii) and (iii) are not met.
4. As the lodging requirements for an application under S 33 Notice of the Act and Rule 66 of the Procedural Rules as well as under S 18 of the Act and Rule 65 of the Procedural Rules are not met, it would not be appropriate for the FTT to accept the application. The application is rejected on that basis.

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.

P Hennig-McFatridge

Petra Hennig McFatridge

Legal Member

11 August 2021