



**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

30 Stafford Street, Flat C, Aberdeen, AB25 3UR (the property)

Case reference FTS/HPC/EV/21/0985

Parties

Mr Sajid Sait (the Applicant)

Mr John Cutt (the Respondent)

Stewart Property Services (Applicant's Representative)

1. On 23 April 2021 the First –tier Tribunal for Scotland, Housing and Property Chamber (FTT) received an Application for an eviction order under Rule 66 of the Procedural Rules. The application was accompanied by a tenancy agreement for the property commencing 11 June 2013, an AT5 document, a Notice to Quit which was dated 17 September 2020 for a date of 18 March 2021, a S 33 notice dated 17 September 2020

for a date of 18 March 2021, a S 11 notice. No proof of sending any of the documents was provided.

2. The tenancy agreement lodged states as the duration in clause Three:” The lease will commence on the 11th June 2013, on a month to month basis and on the understanding that if you wish to vacate we require a 60 days (2 months) clear notice period from the said tenancy date, being the 11th of the month.”
3. On 6 May 2021 the FTT wrote to the Applicant. The letter stated: “ *Please provide the following information to enable your Application to be considered. (1) Your application is made under Rule 66 which is an application for an order for possession upon termination of a short assured tenancy but the date specified in the Notice to Quit and the Section 33 notice does not appear to be an ish date for the short assured tenancy agreement you have produced. Please consider whether you wish to withdraw the application under Rule 66 and if not please provide a legal submission specifying why you submit that the application should be considered, with reference to legal authority. (2) It is noted that in Section 5 of the application form under “possession /eviction grounds” you have made reference to rent arrears which are irrelevant to an application under rule 66. Should you wish to seek possession on the basis of rent arrears, please submit a fresh application or amend your application to proceed under Rule 65, an application for an order for possession in relation to assured tenancies, and provide the required documents (see below at (5)) (3) Subject to what is said above in point (1), please provide proof of service of the Notice to Quit and Section 33 noticed notices (4) Please provide proof of sending section the 11 notice to the local authority. (5) If the application is amended to Section 65, please ensure that you provide the required documents, including an AT6 with proof of service; a rent schedule showing a running total of rent arrears with the amount outstanding as at the date of service of the AT6; and proof of compliance with the pre-action protocol requirements.*”
4. The Applicant’s representative replied on 10 May 2021 stating that no AT6 document had been served and that “the reason for the date was to give it enough time to reach the tenant in the post”.
5. The FTT again wrote on 19 May 2021. The letter stated: “*You have advised that you have not served an AT6 form and so are relying on the Notice to Quit and S33 as grounds of eviction. You have provided a Notice to Quit which does not appear to be valid as it does not refer to the tenant being required to leave at an ish or termination date of the lease. Without a valid notice to quit the application has no prospect of success. You were previously asked to provide a submission supported by legal authority as to why the Tribunal should accept your application if the Notice to Quit does not refer to an ish date. Can you please now provide this or consider if you wish to withdraw your application. The Tribunal is an independent judicial body and so cannot give legal advice. If you wish to obtain legal advice which you say you have already done you should consult your solicitors. Please provide your response within 14 days failing*

which your application may be rejected.”

6. The reply on 19 May 2021 from the Applicant’s representative was that there had never been a problem with this in the courts previously.
7. The FTT wrote again on 3 June 2021. The letter stated: *“Thank you for your e-mail of 19th May again enclosing a copy of the Notice to quit and S33 notice. We cannot comment on what happened with previous cases in the sheriff court but the Tribunal has to be satisfied that this is a potentially competent application. As you are relying on the serving of a S33 notice to require your tenants to leave the Property if this is a short assured tenancy, then to raise an action for eviction if they don’t leave you also need to serve a valid Notice to Quit to bring the contractual tenancy to an end. One of the requirements of a Notice to Quit is that it must be served referring to an ish date or termination date of the lease otherwise it is not valid and the tenancy continues. In your tenancy agreement the tenancy is stated to start on 11th June 2013 and continues on a month to month basis. The Termination date would therefore be on 11th of a month and not 18th of March which is what you have put in your Notice to quit. In addition a short assured tenancy is only created if the tenancy is created for a minimum of 6 months and again your tenancy agreement does not appear to be for an initial period of at least 6 months, can you please let us have your comments on whether you believe this is a short assured tenancy and why? Given these two issues please advise with legal submissions why you think the Notice to Quit and the raising of an action under S33 is valid? If you cannot provide reasons why we should consider this a valid application your application is likely to be rejected. Again you may wish to take legal advice on this. Please respond within 14 days failing which your application is likely to be rejected.”*
8. The reply on 15 June 2021 advised that the date had been an oversight and that there was an original tenancy agreement, now attached, which did state as the original duration of the tenancy 11 December 2009 to 11 December 2010 with a renewal option for 6 months or a year. The AT5 document for that tenancy agreement was provided.
9. The Applicant’s representative did not provide any evidence of service of the Notice to Quit, S 33 notice or S 11 notice at any point and did not materially address the issue of the invalid ish date.
10. On 1 July 2021 the FTT wrote again stating: *“You have provided some of the information requested by the Tribunal in the letter to you of 3 June 2021. The Tribunal still requires your submissions on the validity of the Notice to Quit. If you accept the notice is invalid then please withdraw the application. If you do not then provide your submissions. Please provide the information requested within 14 days failing which your application may be refused.”*
11. The answer to this request was sent on 15 July 2021 as follows: *“Thank you for your email and sorry for the delayed response. In regards to your letter we have submitted all information really unsure what you are actually asking at this time please.”*
12. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

13. 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."

14. 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

15. The Application indicated as the relevant rule under which it should be considered Rule 66 of the Procedural Rules. This requires:

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.

16. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application does not contain a date by which the Respondent was required to quit the property. It is not a valid notice. The tenancy agreements lodged both commenced on the 11th day of the month and, regardless of which tenancy agreement the application would ultimately be based on, in both the relevant ish date would be an 11th day of the month, not the 18th day of the month. The Notice to Quit must be to an ish date. This had been explained to the Applicant's representative on several occasions and a request for submission was issued, which only provided as an answer that "*the reason for the date was to give it enough time to reach the tenant in the post.*" It is clear that the Applicant's representative did not appreciate the relevance of the ish date to prepare

a valid Notice to Quit.

17. 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.
18. It would not be appropriate for the Tribunal to accept the application without the required Notice to Quit and it is therefore 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.

P Hennig-McFatrige

Petra Hennig McFatrige
Legal Member
28 July 2021