



**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/23/1519

**Parties**

**Mrs Bridget Hepburn (Applicant)**

**Miss Jordan McArthur, Mr Jason Hunter (Respondent)**

**10/6 Portpatrick Road, Old Kilpatrick, G60 5JR (House)**

1. On 10.5.2023 the First –tier Tribunal Housing and Property Chamber (FTT) received an application for an order for recovery of possession for the property dated 3.5.2023. The applicant stated the application was made under Rule 66 of the Procedural Rules, being an application for order for possession upon termination of a short assured tenancy in terms of S33 of The Housing (Scotland) Act 1988 (the Act).
2. The application was accompanied by documents sent by email on 17.1.2023 to the respondents under the heading S 33 Notice and Notice to Quit and also included the tenancy agreement, 3 pages of an AT5 notice, a S 11 notice and email sending same.

The Notice to Quit and S 33 documents both state that the tenant is required to remove from the property on or before 31.1.2023. The tenancy agreement in clause 3 states that the initial term is from 17.4.2016 to 16.10.2016 and continues thereafter on a monthly basis. The AT5 notice was only partially produced.

3. On 9.6.2023 the FTT wrote to the applicant requesting further information and raising in particular the issue of valid service of the documents and the content of the Notice to Quit. The letter requested a reply by 23.6.2023. No reply has been received.
4. 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 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 has not provided a valid Notice to Quit. The S 33 document and Notice to Quit documents provided both specify as the date when the landlord requires the property to be vacated 31.1.2023. The initial ish date of the tenancy in terms of clause 3 was 16.10.2016. Given the term of the tenancy agreement 31.1.23 is not a valid ish date. The- Notice to Quit document itself does not contain the information required by The Assured Tenancies (Notices to Quit Prescribed Information )(Scotland)

Regulations 1988 as amended as it does not refer to the information regarding the replacement of the contractual assured tenancy with a statutory assured tenancy and does not replicate the wording of the schedule in the Regulations. The Notice to Quit is not a valid notice to quit. Thus I find that the application was not accompanied by a valid Notice to Quit and does not meet the lodging requirement of rule 66 (b) (iv).

2. The Notice to Quit and S 33 Notice were sent by email. There was no explanation of any agreement between the parties that email service of the S 33 Notice would be agreed. In terms of S 54 of the Housing (Scotland) Act 1988 email is not a valid delivery form of a statutory notice under part II of the Act. The provisions under Schedule 4 para 1 (2) of the Coronavirus (Scotland) Act 2020 allowing email transmission of documents under certain circumstances came to an end on 1.10.2022 and in any event the applicant had not provided information showing that such transmission was agreed between the parties. I consider the S 33 notice was not validly served.
3. Although the list of documents stated on the application contains an AT5 document, this was not provided. Only 3 pages of an AT5 document were lodged. Thus the application does not comply with the lodging requirement stated in rule 66 (b) (ii).
4. As the lodging requirements for an application under Rule 66 of the Rules of Procedure are not met, it would not be appropriate for the FTT to accept the application. The application is 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**

Petra Hennig McFatridge

Legal Member

13 July 2023