



**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/23/1779

Parties

Mr Andrew Sutherland (Applicant)

Mrs Catherine Hudson Storey, Ms Ricci Hudson Storey (Respondent)

14 Grebe Ave, Inverness, IV2 3TD (House)

1. On 31.5.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 65 of the Procedure Rules from the Applicant. The following documents were submitted with the application: Tenancy Agreement commencing 20.3.16, AT6 notice which did not have a date entered in part 4 and referred to "ground 1 the landlord intends to sell the let property", recorded delivery slip for AT6 notice dated 31.5.23, S 11 notice with email sending same on 31.5.23,

AT5 notice served on the Respondent on 11.3.16, S 33 notice to 26.5.23 dated 21.3.23 with proof of posting same on 21.3.23 and proof of receipt of same on 22.3.23 and Notice to Leave on ground 1 dated 18.11.22.

2. On 30.6.23 the FTT wrote to the Applicant in the following terms: Thank you for your application which has been considered by a legal member with delegated authority of the Tribunal President who has requested the following further information:- 1. You have applied for an order for eviction under Rule 65 which is in respect of S18 of the Housing (Scotland) Act 1988, however you have provided a form AT6 that is dated 31st May and has no date in Schedule 4 which advises the tenant when the application will be raised and it refers to "Ground 1 the landlord requires to sell the property". This is not a valid ground under Schedule 5 of the 1988 Act. Ground 1 in Schedule 5 states "Either the house was the landlord's only or principal home at any time before the tenancy was granted; or the landlord needs the property for them or their spouse for use as the principal home of one or both of them and did not become the landlord through buying the house or otherwise acquiring it for value." Given that the application appears to be premature and is not based on a valid ground of eviction please advise if you wish to withdraw this application or please advise why you believe it should be accepted under Rule 65. To rely on Rule 65 you will also need to provide a valid Notice to Quit. 2. You have also supplied a form s33 and evidence of a form AT5. If you wish to amend your application to apply under Rule 66 which relies on s33 then please advise and please provide a revised application form referring to that rule number. To rely on S33 you will also have to show that the contractual lease has been terminated by a valid Notice to Quit. It is noted that you appear to have served a Notice to Leave but this is a notice that applies only to tenancies that commenced after December 2017 and your tenancy agreement seems to have commenced on 20th March 2016 which means it is either an assured or short assured tenancy and a Notice to leave is not therefore relevant. If you wish to apply under s33 you require to provide the following additional items in addition to an amended application:- a. Valid notice to quit together with evidence of service on the tenant eg a proof of posting and track and trace receipt. b. A track and trace receipt for the service of the s33 notice. (you have already provided the proof of posting) c. Evidence of service of the s11 notice on the local authority such as a copy email or proof of posting. You may wish to take some legal advice on your application as matters relating to evictions can be complicated. d) Please also provide a full copy of the s11 notice as it is noted only the first page has been enclosed and there should be a second page with relevant legislations ticked. Please reply to this office with the necessary information by 14 July 2023. If we do not hear from you within this time, the President may decide to reject the application.
3. On the same day the Applicant provided an amended application now under rule 66 and re-sent the tenancy agreement, AT5 notice, S 33 notice and confirmation of receipt of same on the tenant on 22.3.23 and S 11 notice with email sending same.

4. The FTT again wrote to the Applicant on 29.7.23 requesting the following further information: A Legal Member of the Tribunal with delegated powers of the President has considered your response. You have indicated that you have submitted a Notice to Quit. However, the documents lodged appear to comprise an AT5 notice, Section 11 notice, Section 33 notice and the tenancy agreement. You have also submitted evidence of service of the Notices. A valid Notice to quit is always required in connection with a Rule 66 application and is sometimes required for an application under Rule 65. If you have not served a Notice to quit you should withdraw the application and re-submit it once you have done so. Otherwise please clarify why you consider that 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 Please reply to this office with the necessary information by 12 August 2023. If we do not hear from you within this time, the President may decide to reject the application.
5. The Applicant replied on 7.8.23: " I apologise if I sent the wrong documents with my last email. I'm finding the whole process quite difficult and stressful. Please now find attached a copy of the notice to quit which was sent and also the certificate of posting and screenshot of proof of delivery. Please let me know if you require any further information." The documents attached to this email were the S 33 notice and proof of posting and receipt. No Notice to Quit was attached.
6. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

- 8. 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. Despite the reference to rule 65 on the original application the Applicant clearly wished to proceed with an application under rule 66 of the Procedure Rules.
2. 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. No Notice to Quit was produced. The document the Applicant re-sent several times was a S 33 notice and stated as the date when the tenant needed to remove from the property 26.5.23, which is not an ish date for a tenancy that initially commenced on 20.3.16 with an initial end date of 19.9.16 and bi-monthly continuation clause. The Notice to Leave which the Applicant produced is a Notice for Private Residential Tenancies under the Private Housing (Tenancies)(Scotland) Act 2016 and is not a valid Notice to Quit for a Short Assured Tenancy under the Housing (Scotland) Act 1988. The Notice to Leave provides in part 4 the date proceedings could be raised as 1.3.23 and provides no specific date on which the tenant has to quit the property. The date stated, again, is not a valid ish date for the lease.
3. 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. It appears no Notice to Quit was actually ever issued to the tenant. The notices produced do not validly terminate the tenancy. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
4. 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. It would not be appropriate for the FTT to accept an application which does not meet the lodging requirements.
5. The application in terms of rule 66 is thus rejected.
6. For the avoidance of doubt, the lodging requirements for an application under rule 65 are also not met. No required ground for recovery of possession in terms of schedule 5 of the Housing (Scotland) Act 1988 was stated and the ground quoted in the Notice to Leave is not a ground under the Housing (Scotland) Act 1988. The AT6 document did not give a date under part 4 and referred to ground 1 that the landlord wished to sell the property, which, as set out above, is not a valid ground. The ground 1 quoted is the ground 1 set out in schedule 3 of the 2016 Act and does not apply to the tenancy, which started in 2016. No valid Notice to Quit and no AT6 was submitted.
7. The application is therefore also rejected as an application under rule 65 because it would not be appropriate for the FTT to accept an application that does not meet the lodging requirements.

8. The Applicant had been repeatedly asked to provide further information and it had been suggested to him to seek legal advice. The Applicant had not provided the documents required. In the circumstances the application is rejected as it would not be appropriate to accept an application that does not meet the lodging requirements under either rule 65 or rule 66.

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
23 August 2023