



**DECISION AND STATEMENT OF REASONS OF JAN TODD, 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/22/0236

John Perdikou t/a Perdico Homes (Applicant)

Ms Sarah Mitchell (Respondent)

1/4 (Formerly Flat 6), 24 Kensington Gate, Glasgow, G12 9LQ (House)

1. On 25th January 2022, an application was received from the Applicant. The Application was made under Rule 66 of the Procedural Rules, being an application for eviction in relation to a possession on termination of tenancy in terms of S18 of the Housing (Scotland) Act 1988. In clause 5 of the application form the Applicant stated he required repossession on ground 6 to make alterations for safety purposes including rewiring. The following documents were enclosed with the application:-

- Copy Assured Tenancy Agreement between the parties with a start date of 1st September 1995 and an end date of 31st August 1996
- AT6 notice dated 29th June 2021 and stating date proceedings will not be raised before as 31st December 2021

- Copy Notice to Quit dated 29th June 2021 giving notice to Quit by 31st December 2021
- S11 Notice to Glasgow City Council
- S33 notice dated 29th June 2021

2. The Tribunal wrote to the Applicant on 11th February 2022 saying;-

“Before a decision can be made, we need you to provide us with the following:
The application form refers to ground 6. The AT6 notice lodged refers to ground 14. Please clarify which ground or grounds you wish to rely on.

1. If you wish to rely on ground 14, please provide- (a) Evidence of service of the AT6 notice as the email submitted only refers to the section 33 notice (which is not required for Rule 65 applications). If it was served by email, you will also need to show that the Respondent agreed to receive notices by email or acknowledged it. (b) Evidence in support of the ground, which shows that the respondent has damaged or allowed the property to deteriorate through neglect

2. If you wish to rely on ground 6, please provide- (a) An AT6 notice which relates to this ground and a valid notice to quit. The notice to quit submitted appears to be invalid as the date specified is not an ish or end date of the tenancy. If you have not served an AT6 you can ask the Tribunal to dispense with this. However, you will need to persuade the Tribunal at the CMD or hearing that it is reasonable to do this. (b) Evidence of service of the valid Notice to Quit and AT6 notice, if applicable (see 1(a) above). (c) Evidence showing that you intend to demolish, reconstruct or carry out substantial work at the property and that this cannot be carried out with the respondent in occupation or temporarily decanted from the property. You should provide full details of the work and evidence, such as contract with a builder or building warrant/planning permission for the work. Please also confirm if you have agreed an appropriate level removal expenses with the Respondent, as required by Section 22 of the 1988 Act. In either case, please also provide evidence that the section 11 notice was sent to the Local Authority. Please reply to this office with the necessary information by 25 February 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. The Applicant responded by e-mail dated 18th February confirming he wished to rely on Ground 6 and s18 7of the 1988 Act. He confirmed he wished to ask the Tribunal to dispense with the service of an AT6 and advised that the \notice to Quit was valid as the lease was for an initial period of 6 months ending on 31st August and thereafter continuing on a monthly basis with the ish date being the end of each month. He submitted on that basis the notice to quit was valid. The Applicant further advised the Notice to Quit was posted through her door on 31st December and they required repossession to rewire the Property which is a fire risk and access cannot be gained with tenant's possessions in the property. The applicant also provided a revised application form.
4. The Tribunal considered the application again and wrote again to the applicant:-
*“Before a decision can be made, we need you to provide us with the following:
1. Please clarify under which rule you are making the application. The replacement application states rule 66, which relates to applications for orders for possession upon termination of a short assured tenancy. This would require an AT5 document to be submitted and ground 6 would not be relevant to such an application. 2. Please advise on what basis you consider the Notice to Quit was validly issued to an ish date. You state the tenancy was entered into for an initial period of 6 months and continued thereafter month to month. The tenancy agreement submitted in evidence in clause 1 states the initial period of 12 months from 1.9.1995 to 31.8.1996 and appears not to provide for a continuation from month to month thereafter. 3. You state that you wish to rely on Ground 6. If this is the case please submit an application under the corresponding rule and provide the evidence to show that the ground is met, which had previously been requested in the Tribunal's letter to you dated 11 February 2022 item 2 (c). 4. Please provide the date on which the Notice to Quit was served on the Respondent and please, if available, provide evidence that it was personally served. 5. Please provide evidence, as previously requested, that the S 11 Notice was served on the Local Authority. As previously stated, you may wish to seek legal advice on the matter. Until the above is provided the application would likely have to be rejected*

5. The applicant responded on 10th March stating *“We refer to you email of 4th March 2022 and our response is as follows: 1. Printed on the lease is the statement “I acknowledge receipt of notice served under Section 32 (1)(b) of the Housing (Scotland) Act 1988” which was signed Adopted as holograph. This confirmed receipt of the provided AT5 document. We attach copy lease for your perusal. 2. The notice to quit was issued at the same time as the section 33 notice ending 31st December 2021. 5. We attach herewith copy of email to the local authority regarding the Section 11 Notice. Please advise if the above information is sufficient for us to proceed with the action”.*
6. The Tribunal wrote again to the Applicant asking for further clarification and information:- *“Before a decision can be made, we need you to provide us with the following: (i) You still appear to be confused as to the rule under which you are making the application. If you are making the application under Rule 66, a copy of the Form AT5 is required, as is a valid Notice to Quit and a section 33 notice. A Form AT6 is not relevant to a Rule 66 application, nor is Ground 6. A Form AT6 is only relevant to a Rule 65 application. If you continue to wish to rely on Ground 6, please submit an application under the correct rule, with evidence that the ground is met. You may wish to take legal advice on this matter, particularly in view of the issues raised previously and repeated below concerning the validity of the Notice to Quit. (ii) You state the tenancy was entered into for an initial period of 6 months and continued thereafter month to month, however, the tenancy agreement submitted in evidence in clause 1 states the initial period of 12 months from 1.9.1995 to 31.8.1996 and appears not to provide for a continuation from month to month thereafter, therefore, the ish date would appear to be 31st August each year. It would seem, therefore, that the Notice to Quit was not issued to an ish date of the tenancy, and it would appear to be invalid. Please reply to this office with the necessary information by 19 April 2022. If we do not hear from you within this time, the President may decide to reject the application.”*
7. The Applicant did not reply and a further reminder was sent on 26th May following which the Applicant responded as follows:- *“We had understood that the date has lapsed and we shall be re-applying with notices relevant to the ish date. Perdico Homes.”*

8. The Tribunal sought to clarify if the Applicant was withdrawing this application and reapplying by asking on 17th June "Could you please advise whether you wish to proceed with the above case or withdraw it at your earliest convenience. This would be greatly appreciated." The Applicant replied on the same day stating "Thank you for your email of today's date. We do wish to proceed with the above case".
9. The issue that appears to the Tribunal to be fundamental and fatal to this application is the question of the date specified in the Notice to Quit which is not an ish date of the tenancy. In addition the Applicant has not responded substantively to the Tribunal's requests on 4th March 2022 or 5th April 2022.

DECISION

10. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

11.

"Rejection of application

Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47,to 50, 55, 59,61,65,to 70,72,75 to 91, 93 to 95,98 to 101,103 or 105 to 111 as appropriate.

(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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."

12. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (a) and (c) of the Procedural Rules.

REASONS FOR DECISION

13. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- *“What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”*. It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

14. the following issues have been identified in the paperwork submitted:-

- a. The Notice to Quit does not specify a valid ish date. The Applicant submits that the ish date could 29th of each month as he has submitted the tenancy was for 6 months and then monthly thereafter. However the tenancy states that the term is from 1st September 1995 to 31st August 1996 which is for one year and there appears to be no provision for it to continue on a monthly basis thereafter. In the absence of any provision in Tenancy Agreement to the contrary it is assumed tacit relocation is in operation. This means the ish date is 31st August in each year and the Applicant having given a Notice to Quit with an ish date of 31st December has failed to validly terminate the contractual tenancy, December not being a monthly date on which the tenancy automatically renews if not validly terminated. The termination on a valid ish date is an essential requirement of any application relying on s18 of the Housing (Scotland) Act 1988 and ground 6 of Schedule 5 as the contractual tenancy has not been brought to an end. S18(6) states that “the First Tier Tribunal for Scotland shall not make an order for possession of a house which is for the time being let on an assured tenancy not being a statutory assured tenancy unless the ground for possession is Ground 2 or Ground 8 in part I of Schedule 5 to the Act or any of the grounds in part II of that Schedule, other than Ground 9, 10, 15 or 17 and (b) the terms of the

tenancy make provision for it to be brought to an end on the ground in question. As Ground 6 which the Applicant is relying on is not a ground to which S18 (6) applies then the contractual tenancy must be terminated and a statutory assured tenancy requires to be in place for the tribunal to consider this application. The contractual tenancy has not been validly terminated and therefore this is not a statutory assured tenancy and the Tribunal cannot consider making an order for possession. The valid termination of the tenancy is not a matter for Tribunal discretion. It is a fundamental and well established rule of property law and cannot be disregarded. In addition the Applicant has mentioned having served a s33 notice but has clarified he is applying under Ground 6 which is an application under S18 of the 1988 Act not s33, although the applicant has referred to Rule 65 in his revised application which does refer to s33 of the 1988 Act. If the Applicant was trying to make an application under S33 he still requires a valid Notice to Quit which for the reasons stated above the Tribunal finds has not been lodged.

- b. After consideration of the application, the attachments and correspondence from the Applicant the Legal Member considers that the Application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1) (a) and Rule 8(1) (c) of the Rules.

15. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(a) and (c) of the Procedural Rules.

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.



Jan Todd
Legal Member
4th July 2022