



**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

80 D Main Street, Kilwinning, KA13 6AG

Case Reference: FTS/HPC/EV/20/2434

Kimberley Mollison ("the applicant")

Denise Ferguson ("the respondent")

1. The First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 19 November 2020 from the applicant’s representatives Abbey Forth Property Management. 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 a copy of a document headed Short Assured Tenancy with a start date of 12. 12. 2016 and an end date of 13. 06.2017, a notice to quit dated 10 May 2020 for a date of 12 November 2020, a S 33 Notice dated 10 May 2020 for a date of 12 November 2020 and a rent statement. The application item 5 referred to Ground 8 and 3 months rent arrears.
3. By letter of 3 December 2020 the FTT in terms of Rule 5 (3) of the Procedure Rules

requested further information to be provided as the application in the form presented did not meet the lodging requirements of an application under Rule 66. This is referred to for its terms and held to be incorporated herein. The date for further representations was stated as 17 December 2020.

4. The applicant's representatives on 4 December 2020 asked for advice from the FTT as follows: " *With regards to the attached Can you confirm if all you require is the AT6 and section 11. Can you confirm when a section 11 should be issued to a tenant? Also could you confirm if when sending a notice to a tenant who is on the old Short assured tenancy should you be serving notice to quit / section 33 / AT6 and the PRT notice to leave? Or is the notice to quit / section 33 / AT6 enough? "*
5. The FTT replied on 15 December 2020 that the FTT cannot provide legal advice and provided contact information for organisations where advice may be obtained. No further communication was received from the applicant or her representatives thereafter.
6. 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 had been given ample notice by the FTT of the issues identified regarding problems with the Notice to Quit, missing information and the lack of documents to fulfill the lodging requirements.
2. The application at present does not meet the lodging requirements for an application under Rule 66, which is the Rule stated in the application, as it was not accompanied by the documents required in terms of Rule 66 (b) (ii) and (iii). No AT 5 or S 11 notice had been lodged with or after the application.
3. The application appeared to be based on Ground 8 of schedule 5 of the Housing (Scotland) Act 1988 but was not made under the relevant rule for that type of application, Rule 65, and did not contain an AT6 document. The applicant's representatives were informed of this and given the opportunity to amend the application and supply the required documents. They did not do so.
4. The Notice to Quit was issued to a date which was not an ish in terms of the tenancy agreement and thus would not be valid. The applicant's representatives were given the opportunity to address the FTT on that matter but did not do so. They asked for advice on how to competently end a tenancy, which is not something the FTT can provide.
5. As the lodging requirements for an application under S 33 Notice of the Act and Rule 66 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.

Petra Hennig Mcfatridge

Petra Hennig McFatridge
Legal Member
12 January 2021