

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/21/3061

Parties

Ms Mona Kalsoom (Applicant)

Mr Mahamdul Hassan (Respondent)

AQA Properties Ltd (Applicant's Representative)

Flat 2/3, 7 Thistle Terrace, Glasgow, G5 0SJ (the property)

1. On 8 December 2021 the First-tier Tribunal Housing and Property Chamber (FTT) received an application for an order for possession for the property. 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 a Notice to Leave, tenancy agreement, AT5 and S 11 notice referring to proceedings under Section 36(6A).

3. FTT in terms of Rule 5 (3) of the Procedure Rules requested further information to be provide as the application in the form presented did not meet the lodging requirements of an application under Rule 66. The FTT requested a copy of the Notice to Quit and the S 33 notice.
4. In reply the Applicant provided a copy of a Notice to Quit and S 33 document both dated 7 October 2021. The S 33 notice stated as the date the Respondent had to remove "on or before 28/01/2021 and the Notice to Quit stated "I hereby give you formal notice to quit the premises occupied by you at 7 Thistle Terrace, flat 2/3 Glasgow, G5 0SJ --- 28th of January 2021".
5. The tenancy agreement submitted shows as the tenancy period in clause 2 a start date of 30 November 2016 and as the end date 29 May 2017 and provides for continuation monthly thereafter until termination by two months written notice from one party to the other. It states if no action is taken to terminate the tenancy it will continue by tacit relocation. The Notice to Quit submitted shows as the termination date 28 January 2021.
6. The FTT asked the Applicant on 5 January 2022: "• Please provide proof of service of the section 11 Notice on the local authority; • Please provide proof of service of the section 33 Notice and the Notice to Quit on the Respondent; • Please provide your comments on the validity of the Notice to Quit. The "ish" or end date of the tenancy is the 29th day of the month. The Notice to Quit specifies the 28th January as the "ish" or end date (which appears to be incorrect)."
7. The Applicant in an email of 13 January 2022 stated: "3. Regarding "ish" date it' could be a typo, correct ish date is 29th"
8. On 1 February 2022 the FTT again asked the Applicant for further information stating: "1. Please clarify the basis on which the application is made. The application is made under Rule 66, which would indicate that the reason for the application is that a Short Assured Tenancy was terminated in accordance with the requirements of S 33 of the Housing (Scotland) Act 1988. However, you provided an AT6 document stating the ground was that the landlord was moving into the property and a Notice to Leave which stated the property should be sold. You have also stated on the application itself that the landlord wishes to sell the property, which is not a ground for eviction in

terms of the Housing (Scotland) Act 1988 2. If you are proceeding on the basis of S 33 of the Housing (Scotland) Act 1988 please provide a valid Notice to Quit if you wish to continue with the application. Whether or not the date on the notice to quit was a typographical error or a calculation error, the notice to quit did not terminate the tenancy to an ish date and in order to proceed with the application a valid Notice to Quit is required. 3. You have not provided evidence of how the Notice to Quit and the S 33 Notice were sent. You state you have previously provided this but no recorded delivery proof of service or Sheriff Officer proof of service has so far been lodged. Sending a Notice to Quit and S 33 Notice by simple first or second class post is not valid service, equally sending it by email is not valid. Please provide proof that the required notices were served by means stated in S 54 of the Housing (Scotland) Act 1988. 4. Should you in fact wish to base the application on a ground other than the termination of a Short Assured Tenancy under S 33 of the Housing (Scotland) Act 1988 please provide the required Notice to Quit and AT6 document and amend the application to the applicable rule. If that was your intention you would also have to provide an AT6 document which has not expired in terms of S 19 (6) of the Housing (Scotland) Act 1988. The AT6 document lodged expired prior to the application having been lodged. 5. The S 11 notice sent to the Local Authority states the wrong legislation under which the application is being pursued. Please send a correctly completed S 11 Notice.”

9. In reply the Applicant sent the following on 14 February 2022: “1. We would like to proceed with rule 66 that landlord want to move in herself . 2. We can provide another copy of the Notice to Quit (as we already mention the ish date was typographical error) 3. The notice to Quit were send via recorded delivery in October 2020 , we cannot provide you the proof this time because we have checked with Royal mail they only keep the record from no more than six months (PLEASE SEE ATTACHED EMAIL FROM ROYAL MAIL CONFIRMING THIS) . 4. Regarding Section 11 please see attached SECTION 11 which has been sent to Homelessness department. “ A fresh S 11 notice was included with this email. No evidence of service of this was provided and it did not provide the landlord registration details
10. The documents and correspondence in the application file 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. S 33 (1) of the Housing (Scotland) Act 1988 sets out the requirements on which an order for possession can be made. It requires the short assured tenancy to have reached its finish and tacit relocation not to be operating. The Applicant had been given ample notice by the Tribunal of the issues identified as relevant to the application.
2. The Applicant has provided a Notice to Quit to the Respondent but to date, although this had been queried repeatedly in correspondence and the matter has been appropriately intimated as a problem for the application by the FTT to the Applicant, he has not provided arguments as to how the FTT could consider the Notice to Quit to be valid. In the absence of any such representations the FTT considers that no valid Notice to Quit has been issued. The ish date of the tenancy in terms of the provisions of the tenancy agreement clause 2 is clearly the 29th day of the month. The Notice to Quit states as the date to quit the property 28 January 2021, which does not coincide

with an ish date of the tenancy. The Applicant was obviously aware that this was an issue and stated that this was a typographical error and that the ish date was indeed the 29th of the month. This shows that the Applicant himself had identified that there was a problem with the date stated on the notice. The Notice to Quit is issued to a date prior to a possible ish date. It is not clear how the Respondent would have been able to identify the notice as a clear and unambiguous notice to quit terminating the tenancy agreement to a specific date and preventing tacit relocation from a specific date. Furthermore the Notice to Quit was not accompanied by the required information stated in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 Regulation 3 as it still referred to the “court” rather than the First-tier Tribunal”. Therefore the lodging requirement in terms of s 66 (b) (iv) is not met as there is no valid Notice to Quit. As the lodging requirements for an application under Rule 66 of the Rules of Procedure and requirements under S 33 Notice of the Act are not met, it would not be appropriate for the FTT to accept the application.

3. The Applicant was left in no doubt that a valid Notice to Quit was required and that the Notice to Quit had been issued to a date that was not an ish date. The FTT had provided information that without this the application may have to be rejected. The Applicant thus had fair notice of the issue.
4. 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

Legal Member

1 March 2022