



**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/22/1796

**Parties**

**Miss Michelle Collie (Applicant)**

**Mr Ioannis Kampolis, Ms Anthoula Sarri (Respondent)**

**30R Fraser Road, Aberdeen, AB25 3UH (House)**

1. On 9.6.2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 66 of the Procedure Rules from the Applicant.
2. Appended to the application was an AT5 document, a tenancy agreement commencing 17.2.2017 with an end date of 17.8.2017 and a continuation monthly thereafter stated in clause 9, a Notice dated 9.6.2022 to quit the premises on 20.7.2022 and a S 33 document dated 9.6.2022 requiring vacant possession on 28.7.2022.

3. On 4.7.2022 the FTT wrote to the Applicant advising that the application was premature, not accompanied by a S 11 notice and service proof of any of the notices, requesting an explanation how the Notice to Quit could be valid as it was not issued to an ish date of the tenancy and requesting information as to the consent of the joint owner. Initially no reply was received by the date stated in the letter, 18.7.2022. A further letter was issued on 25.8.2022 and a reply received on 31.8.2022 sending delivery notice showing service of the Notice to Quit and S 33 notice on 11.6.2002. The Applicant also provided a S 11 notice and service evidence and a letter from the joint owner authorising her to make the application in her sole name. The explanation given for the date on the Notice to Quit was that this was the date 40 days after the notice was sent.
4. On 6.10.2022 the FTT again asked the Applicant to consider the issue of the validity of the Notice to Quit and the application itself as this had been made prior to the expiry of the notices. On 13.10.2022 the Applicant replied: "I don't follow the request in the letter. Yes the Notice to Quit is dated 9th June. In that time the application has been with the Tribunal to review. Why would I need to resubmit the documents again? With regards to the 17th of the month, this has already been answered in my email of 31/08. The 20th of July was stipulated as this was around 40 day notice to quit period. "
  4. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

## **DECISION**

5. 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."*

- 6. 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. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application requires the tenants to quit the premises on 20.7.2022. The tenancy agreements shows as the relevant ish date the 17<sup>th</sup> day of any month of the year. The Notice to Quit must be to an ish date. A request for submissions was issued, which only yielded as an answer that the date was 40 days after the notice was sent. 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. The Notice to Quit was not to an ish date and thus invalid. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
2. Rule 66 (b) (iii) requires that an application is accompanied by the s 33 notice. This would have to be valid to be a notice which could be considered to fulfill that requirement. The date the S 33 notice was served on the tenant was 11.6.2022 as shown in the recorded delivery confirmation submitted and was dated 9.6.2022. In terms of S 33 (2) of the Housing (Scotland) Act 1988 "The period of notice to be given under subsection (1) (d) above shall be (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months." The period provided in the S 33 notice is less than two months. The notice is thus invalid.
3. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit and without the required S 33 notice. The lodging requirements for such an application have not been met.
4. The application is therefore 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  
11 November 2022