



**DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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 Rules”)**

**Chamber Ref:** FTS/HPC/EV/19/0250

**Re: Property at 1 Fintry Place, Irvine, Ayrshire, KA11 1JB (“the Property”)**

**Parties:**

Roy Shields, Anne Shields (“the Applicants”)  
Natalie Divon (“the Respondent”)

**Joel Conn (Legal Member)**

**BACKGROUND**

1. On 20 January 2019 the Applicants drafted an application under Rule 66 of the Rules, being an “application for order for possession upon termination of a short assured tenancy”, submitting it shortly after.
2. On 28 January 2019, the Tribunal wrote to the Applicants’ agent seeking two documents, one of which was the notice upon the local authority under section 11(3) of the Homelessness etc (Scotland) Act 2003. At that date, evidence of intimation of the said notice upon the local authority when raising proceedings was a statutory requirement upon the Applicants in terms of section 19A of Housing (Scotland) Act 1988.
3. On 31 January 2019, the Applicants’ agents responded to the Tribunal providing other documentation but not the Section 11 Notice.
4. On 22 February 2019, further to consideration of the application by a Legal Member, the Tribunal again wrote to the Applicants’ agent seeking the Section 11 Notice and giving until 8 March 2019 to provide same. As of that date, further to amendment of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) on 20 February 2019, the relevant terms of Rule 66(b)(v) further required that the application be accompanied by a copy of the Section 11 Notice. There was no saving or transitional provisions and the new Rule 66(b)(v) was applicable to the application from 20 February 2019.

5. On 22 February 2019, the Applicants' agent emailed the Tribunal to apologise for the omission of the Section 11 Notice, explaining that there had been a misunderstanding on their part as to what additional papers had been required. The Applicants' agent said that the Applicants would be asked to provide the Section 11 Notice to the Tribunal "as soon as possible".
6. As of today's date, no copy of a Section 11 Notice served upon the relevant local authority has been provided nor any further correspondence received from the Applicants or their agent.
7. The application was considered by me as the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

## **DECISION**

8. I considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

*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 to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. ...*

*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—*

*...*

- c) they have good reason to believe that it would not be appropriate to accept the application;*

*...*

*(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.*

9. Rule 66 (as amended from 20 February 2019) further provides:

*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 the 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.*

10. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

*(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*

*(2) Dealing with the proceedings justly includes—*

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*
- (b) seeking informality and flexibility in proceedings;...*
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.*

11. After consideration of the application and attachments, I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application, it cannot be accepted.

12. The Applicants have been afforded significant time to provide a simple document which they should have long since served upon the local authority in

terms of statute when raising the proceedings. Furthermore, the provision of a copy of this document is now required in order for the application to be complete. In consideration of the over-riding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters.

**RIGHT OF APPEAL**

**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:-

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

J Conn

\_\_\_\_\_  
Legal Member/Chair

20 March 2019  
\_\_\_\_\_  
Date