



**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

16 Teviot Terrace, Johnstone, PA5 0NR (House)

Case reference FTS/HPC/EV/21/2698

Parties

Ms Carole Mitchell (Applicant)

Mrs Denise Sherlock (Respondent)

Cockburn & Co (Applicant's Representative)

1. On 28 October 2021 the First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 18 October 2021 from the applicant's representative Cockburn & Co. The applicant stated the application was made under Rule 65 of the Procedural Rules, being an application for order for possession in relation to assured tenancies in terms of S18 of The Housing (Scotland) Act 1988 (the Act).
2. The application was accompanied by a tenancy agreement, a Notice to Quit dated 14 July 2021 for a date of 14 October 2021, a S 33 Notice likewise dated 14 July 2021 for 14 October 2021 and one page headed Note 3 to tenant (which may be a page from

an AT6 document) dated again 14 July 2021.

3. By letter of 22 November 2021 the 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 65. The FTT wrote: “Before a decision can be made, we need you to provide us with the following:
 1. You have submitted an application under rule 65 but this is accompanied by only one page of an AT6 document and a S 33 Notice. Please first of all clarify if the application is made under rule 65 or rule 66.
 2. If you are applying under rule 65 please provide the whole AT6 document and proof of service of same. If it is to be an application under rule 66 please provide the AT5 document. Please note that the current notice period for a S 33 notice is 6 months and make representations as to the validity of the S 33 notice at this stage given the dates. If the action is raised on the basis of the S 33 notice it appears that this would be premature at present.
 3. In either case please provide proof of service of the documents on the Respondent.
 4. Please provide the S 11 document with proof of service on the local authority.
 5. The Notice to Quit is issued to a date which does not seem to be an ish of the tenancy. The tenancy agreement states as the initial ish date 5 June 2017 and does not seem to provide for a month to month continuation thereafter. Thus it appears that tacit relocation applied from the original ish date in the original interval. Please advise why you consider 14 October 2021 is a valid ish date and why the notice to quit could be considered valid. If you are relying on any case law please provide a copy of the relevant cases to the Tribunal with your representations.
 6. Please explain how you consider Ground 1 can be used in connection with the tenancy agreement. There is no evidence that the applicant has occupied the property previously as her only or principal home. Please provide this now. There is no evidence that a notice as required in terms of Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988 was served by the landlord at the start of the tenancy and Ground 1 is not included in the list of grounds stated in clause 1.2. Please advise on what basis you consider this can now apply and why it would be reasonable to dispense with the necessary notice. Please provide evidence that the conditions of Ground 1 apply in this case.
 7. Please provide evidence that Ground 8 applies in this case. Please provide a rent statement showing: date, rent due, rent paid and running total.
 8. Please advise on the validity of a 3 months notice period in the circumstances of this case. S 19 (4)(c) of the Housing (Scotland) Act 1988 as amended states that the notice period is “six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)- (i) Grounds 2-8 in Part I”. It appears that at present the application may be premature. Please reply to this office with the necessary information by 6 December 2021. If we do not hear from you within this time, the President may decide to reject the application.
4. On 1 December 2021 the FTT received the following reply:” We thank you for your email of

22 November 2021. We reply as follows using your numbering.

1. The application is made under rule 66, short assured tenancy.
 2. & 3. Copy of email that our client sent to Ms Sherlock on 14th July 2021.
 4. Copy of email client responding to the Local Authority.
 5. Our client considers the 14th October 2021 as a valid ish date as it is 3 months after the date of issuing the Notice to Quit as per previous legislation. Our client may not have been aware of the change in the current legislation to 6 months.
 6. Ground 1 is to be considered as our client, the landlord requires to move in and live in the property due to a change in her personal circumstances. A family member is weak and ill and needs to move into the area so that they can be looked after by the family. This family member will move into the home that our client currently shares with her mother and our client intends moving into Teviot Terrace.
 7. Copy of email showing bank statement in relation to rent payments made by Ms Sherlock to our client.
 8. As per point 6 our client requires the property as soon as practicable as an ill family member requires to move in with her mother to be cared for. The current property that is shared with our clients mother is not big enough to accommodate 3 adults.”
5. The applicant’s representative provided with this email an unredacted bank statement showing entries of rent received from the respondent by the applicant and an email exchange between the applicant and the council regarding a reference form for the respondent dated 15 July 2021. No S 11 notice was provided, no AT5 for the tenancy was provided, no proof of service by recorded delivery or Sheriff Officer service or hand delivery of the Notice to Quit and S 33 notice to the respondent was provided.
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 Tribunal of the issues identified regarding missing information and the lack of documents to fulfill the lodging requirements. The FTT also brought to the attention of the applicant the issue of the ish date of the tenancy and asked specifically for this to be addressed.
2. The answer provided to the FTT makes it clear that the application is meant to proceed under Rule 66. The application at present does not meet the lodging requirements for an application under Rule 66, as it was not accompanied by the documents required in terms of Rule 66 (b) (ii), (iv) and (v) as stated above.
3. The application did not include the AT5 document, did not include a valid Notice to Quit, did not include a S 11 Notice to the Local Authority. There was no S 11 notice attached. The email exchange with the Council relates to a reference form, not to a formal S 11 notice. The AT5 document was not submitted. The tenancy agreement shows as the initial period 6 December 2016 to 5 June 2017 and does not seem to provide for a month to month continuation thereafter. Thus tacit relocation applied from the original ish date in the original interval. Even if the tenancy was meant to continue from month to month it is not clear how the 14th day of a month would qualify as a valid ish date. No explanation was provided as to why 14 October 2021 would be an ish date in those circumstances and the FTT is not satisfied that the Notice to Quit has been provided to a valid ish date of the tenancy. In addition, the FTT has not been provided with evidence that the Notice to Quit and the S 33 notice were validly served on the Respondent. This was requested but the only reference in

the reply is to an email to Mr Sherlock of 14 July 2021. In terms of S 54 of the 1988 Act notices served under the relevant part of the Act may only be served by “(a) delivering it to him, (b) by leaving it at his last known address; or (c) by sending it by recorded delivery letter to him at that address”. Service by email is not a valid method of service for notices in terms of S 33 of the 1988 Act. Finally, the application would be premature as it was raised prior to the expiry of the 6 months notice period applicable to S 33 notices.

4. As the lodging requirements for an application under S 33 Notice of the Act are not met, it would not be appropriate for the FTT to accept the application.
5. For the sake of completeness, even if the FTT considered the matter in terms of Rule 65, which is the rule under which the application was originally made, the lodging requirements are not met either. There is no valid S 11 notice. There is no AT6 document and no representations have been met why this should not be necessary. The issue of service of documents and the validity of the Notice to Quit would apply as they do to Rule 66. Again the application would have to be rejected on that basis.
6. 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



Petra Hennig McFatridge

Legal Member

14 December 2021