

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF MELANIE BARBOUR, 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/21/1679 and FTS/HPC/EV/21/1678

Parties

Ms Rachna Dheer (Applicant)

Ms Laura McKendrick (Respondent)

Flat 1/3, 6 Queen Mary Avenue, Glasgow, G42 8DT (House)

1. On 29 June 2021, two associated applications in relation to the same parties, property and tenancy agreement were received from the applicant. One application was made under Rule 66 of the Procedural Rules, being an application for an order for recovery of possession of a short assured tenancy. The other application was made under Rule 65 of the Procedural Rules, being an application for an order for recovery of possession of an assured tenancy under section 18 of the Housing (Scotland) Act 1988.
2. By letters from the Tribunal dated 28 July 2021, the Tribunal requested further information in relation to each application including :-
 - A section 33 notice with proof of service;
 - a copy of the S11 notice with evidence of service;
 - a valid notice to quit –the legal member questioned the validity of the notice to quit submitted, as it was not in the form prescribed by the Assured Tenancies (Notices to

Quit Prescribed Information) Scotland Regulations 1988; and there did not appear to be a date set out in the notice which requires the tenant to leave the property by, there was therefore no reference to the ish date;

- Proof of service of the AT6 Notice
3. On 13 August 2021 the applicant submitted further information however it was not sufficient to allow either application to be accepted. The tribunal wrote again to the applicant on 26 August 2021 advising, that :-
- The S33 notice does not provide an actual date for the tenant to leave, please advise if you consider this to be a valid S33 notice and why?
 - Please also provide proof of service of the S33 notice on the tenant?
 - A valid notice to quit has still had to be submitted, the legal member noted that a second notice to quit had been submitted which refers to a termination date of 5th January 2021, which appears to be an ish date, but again does not have the prescribed information. Neither notice to quit is dated.
 - Please advise when either Notice to Quit were sent and provide proof of sending or service.
 - In addition please advise how the Notice to Quit may be considered valid in either case without the prescribed information?
 - Please also provide a copy of the form AT5 that required to be served on the tenant prior to the creation of the tenancy
 - Please provide a copy of the S11 notice and evidence of how and when it was served
 - With respect to the rule 65 application please supply evidence of the service of the AT6 Notice
 - Evidence to support Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988
4. On 27 and 31 August 2021 the applicant submitted further information, namely,
- A section 33 notice dated 31 August 2021 with no proof of service;
 - A section 11 notice with no proof of service
 - A notice to leave for proceedings brought under the Private Housing (Tenancies) (Scotland) Act 2016 with no proof of service
 - An AT6 notice with no proof of service
 - A market valuation for the sale of the property

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 each application, the attachments and correspondence from the applicant, I consider that each application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept either application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

7. The Tribunal has requested further information to support each application from the applicant. The applicant has not provided the information requested.

8. The applicant has brought to associated applications under rule 65 and 66. Under each rule the applicant is required to provide a valid notice to quit with evidence of service. She has failed to do so. For the application under rule 65 she is required to provide an AT6 Notice with evidence of service (or explain why the tribunal should dispense with service of it). She has provided two AT6 Notices. The notice period has expired in the first one. The notice period has not expired in the second one. She has provided no evidence of service for either. She also did not request that the requirement for the AT6 Notice be dispensed with. For the application under rule 66, she is required to provide a section 33 notice with evidence of service. She has submitted a second section 33 notice, the notice period in that notice has not expired. She has not provided any evidence of service in relation to the either section 33 notice. She also not provided an AT5 Notice which requires to have been served prior to the commencement of the tenancy.
9. I consider that the applicant's failure to provide this information to support either application, as requested by the Tribunal, gives me good reason to believe that it would not be appropriate to accept either application in circumstances where the applicant is apparently unable to do so in order to progress these applications.
10. Accordingly, for this reason, each application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept them within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.



Melanie Barbour
Legal Member
2021