



**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

30 Windsor Drive, Penicuik, EH26 8DT

Case Reference: FTS/HPC/EV/21/0822

Mrs Carole Rorrison formerly McLauchlan ("the applicant")

Ms Tiffany Gibb ("the respondents")

1. On 1 April 2021 an application dated 3 March 2021 was received from the Applicant. The application was made under Rule 65 of the Procedural Rules being an application for an eviction order under S 33 of the Housing (Scotland) Act 1988 (the Act). The following documents were ultimately lodged in connection with the application:- S 11 Notice to Local Authority, Notice to Quit dated 15 September 2020 for 17 March 2021, S 33 Notice dated 15 September 2020 for 17 March 2021 with proof of service on 16 September 2020, Short Assured Tenancy Agreement dated 6 June 2014 with initial ish date of 7 December 2014 continuing thereafter month to month, AT6 dated 15 September 2020 for 17 March 2021 stating as the ground that "The tenancy is in question

is a Short Assured Tenancy and the tenancy period has expired”, authorization for representative, correspondence regarding sale of the property and correspondence regarding the ish date between the applicant and Anderson Bain solicitors.

2. The entry in part 5 of the form deals with an intention to sell the property. No specific ground of eviction is mentioned.
3. The First-tier Tribunal (FTT) asked the Applicant to provide further information on the issue of the ish date and the correct rule under which the application should be made.
4. The response from the Applicant dated 21 April 2021 is referred to for its terms and held to be incorporated herein. In this the Applicant’s solicitors who issued the Notice to Quit agree that the Notice to Quit should have been issued to the ish date of 7th day of the months, not to 17th. In her email the Applicant asked if she needs to issue a further Notice to Quit. On 26 April 2021 the FTT advised the Applicant that the FTT cannot provide advice.
5. The Applicant had submitted a further amended application under Rule 66, again narrating in the body of the text under part 5 the intention to sell the property.
6. The documents are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

8. 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

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.

The Applicant had been given ample notice by the Tribunal of the issues identified regarding the documents produced with the application and chose not to make representations regarding the dates as stated above. He had been advised on 14.1.2020 that the application would be rejected should he not respond to the Tribunal's request for further information.

9. The application at present does not meet the lodging requirements for an application under Rule 66 (which is the Rule stated in the email by the Applicant dated 3 May 2021 as it was not accompanied by the documents stated in Rule 66 (b) (iv) as stated above. The Tribunal considers that the requirement for lodging the documents stated in Rule 66 (iv) refers to a requirement to lodge notices that are valid.
10. The FTT had explained to the Applicant that the Notice to Quit submitted would not be considered valid if it was not given to an ish date of the tenancy. The tenancy agreement stated as the end date 7 December 2014 and further duration month to month thereafter. The Notice to Quit was issued to the 17th of March 2021, which is clearly not an ish date. The correspondence with the solicitors confirmed that there had been an error and that 17th March 2021 is not an ish date. The FTT shares that assessment. There is no valid Notice to Quit and the application cannot be made under Rule 66.
11. The FTT further considered whether there was any potential benefit in offering the Applicant a further opportunity to consider reviving the initial application made in terms of Rule 65. However, proceedings under S 18 of the Housing (Scotland) Act 1988 can only be made in terms if there is a statutory assured tenancy, which requires a valid Notice to Quit or if the tests of S 18 (6) are met. Since the Notice to Quit was not valid, the tenancy at present is a contractual assured tenancy. The grounds of eviction to which S 18 (6) applies do not include the circumstances referred to in the application or the AT6. Thus there is no reasonable expectation that the application could proceed under S 18 of the

Housing (Scotland) Act 1988 and Rule 65 and a further opportunity for the Applicant to consider the application was not deemed to be necessary or appropriate.

12. It would not be appropriate for the FTT to accept an application which does not fulfill the lodging requirements. 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

10 May 2021