

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### DECISION AND STATEMENT OF REASONS OF THE FIRST-TIER TRIBUNAL

in the case

**APPLICANT:** MRS LORNA WOODWARD  
**RESPONDENT :** MISS HOLLIE FERGUSON  
**PROPERTY ADDRESS:** 14 MUIR STREET, BISHOPBRIGGS, GLASGOW, G64 1QQ  
**CASE REFERENCE:** FTS/HPC/EV/18/0281

### BACKGROUND

1. An application was received from the Applicant. The application was made under Rule 65 of the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("The 2017 Regulations") being an application by a private landlord to obtain possession of rented property let under a short assured tenancy.
2. The following documents were provided in support of the application:-
  - a) copy of the Lease upon which the application proceeded, dated 10 November 2016, the initial period of let being from 2 December 2016 until 2 June 2017,
  - b) copy AT5 form dated 14 October 2016,
  - c) copy Section 33 notice dated 1 November 2017, referring to a tenancy commencement date of 4 December 2016,
  - d) copy Notice to Quit dated 1 November 2017,

Following a request for clarification of certain matters by the Tribunal, the following further documents were provided:-

- e) further Section 33 notice dated 1 November 2017, referring to a tenancy commencement date of 2 December 2016,
- f) copy screen shots and photographs purporting to confirm service of Notice to Quit and Section 33 notice,

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- g) e mail raising issues in relation to the tenancy detailing other reasons the Applicant considered relevant to her application for eviction.

3. No Section 11 notice was provided at any stage.

## **DECISION**

4. The legal member considered the application in terms of Rule 8 of the Schedule to the 2017 Regulations. 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.

5. After consideration of the application and other documents submitted in support of it, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application in accordance with Rule 8 (1)(c) .

## **REASONS FOR DECISION**

6. The application was initially supported by the documents referred to at paragraphs 2. a) – 2. d) above. The following issues were noted:-

- The lease did not, in fact, contain the Property address;
  - The s33 notice did not refer to the commencement date specified within the lease, referring to a commencement date of 4 December 2016 rather than 2 December 2016. Given that the lease did not contain a property address it was not clear that the s33 notice referred to the lease which was the subject of the application;
  - There was no proof of service of the s33 Notice;
  - There was no proof of service of the notice to quit;
  - There was no s11 notice nor any proof of intimation of such a notice on the relevant local authority.
7. By letter dated 15<sup>th</sup> February 2018 the Tribunal raised these issues with the Applicant, advising that for the application to proceed a Section 11 Notice was required together with proof of intimation of that notice and proof of service of the Notice to Quit and the Section 33 Notice. It was also pointed out that the Section 33 Notice provided made reference to a tenancy commencement date of 4<sup>th</sup> December 2016 which, of course, gave rise to doubts as to whether or not the Section 33 Notice referred to the Lease which was the subject of the application for eviction.
8. In response to the letter from the Tribunal, the Applicant forwarded to the Tribunal an amended Section 33 Notice. This Notice, however, appeared to be a further copy of the Section 33 Notice which had been provided previously but with the tenancy commencement date of 4<sup>th</sup> December 2016 having been amended to 2<sup>nd</sup> December 2016. That appears to have been done simply by “tippexing” the Number 4 and overwriting with the Number 2 as the commencement date of the tenancy. Otherwise the s33 notice was identical to the one originally submitted with the application. In particular it was dated 1 December 2017.
9. Despite the letter from the Tribunal, the Applicant still did not provide a Section 11 Notice nor any proof of intimation of such a Notice upon the Local Authority.
10. In relation to Proof of Service of the Notice to Quit and the Section 33 Notice, the Applicant forwarded screenshots of text messages between the Applicant and the Respondent which screenshots indicated that the Respondent was not willing to meet her to receive service of the notices. The Applicant provided a photograph of the notices upon a kitchen worktop indicating that the photograph confirmed that the notices had been left at the tenancy for the attention of the Respondent. The text messages and the photograph were undated. There was no information to confirm that the photograph did, indeed, show that Notices had been left at the tenancy.
11. The photograph did appear to show the s33 Notice and the Notice to Quit which had originally been submitted with the application. As previously stated, the Section 33 Notice originally submitted did not refer to the correct tenancy date. The amended Notice submitted does not appear to have been served at all. As stated, the amended Notice appears to be an amended version of the original Notice which, presumably, had been amended following the letter from the Tribunal dated 15<sup>th</sup> February 2018.

12. Having regard to the combined effect of the various issues arising with the application as follows:-

- The absence of a Section 11 Notice;
- The incorrect information contained within the original Section 33 Notice;
- The fact that the amended Section 33 Notice had not been served;
- Doubts in relation to whether or not the original Notice to Quit and Section 33 Notice had been served;

the Tribunal concluded that it was not appropriate to accept the application.

13. The Applicant forwarded an email to the Tribunal dated 19<sup>th</sup> February 2018 in which she raised other issues relating to the tenancy, referring to damage caused to the property by the Respondent and also possible antisocial behaviour issues. These issues, however, did not form any part of the application to the Tribunal. These matters could not be taken into account in assessing whether or not to accept the particular application which was proceeding upon the Notice to Quit and Section 33 Notice having been served on the Respondent and the periods of Notice having expired.

#### **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.

V Crawford

Mr ~~Virgil~~ Crawford  
Legal Member  
26 February 2018