



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mrs Gillian McHutchieson in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/3135

At Glasgow on the 6 October 2022, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Mrs Gillian McHutchieson, the owner and landlord of the property at 3 Thrashbush Road Airdire ML6 6QU ‘the property’, for recovery of possession of the property in terms of Rule 66 of the Rules.
2. The application was dated 31 August 2022 and received by the tribunal on 1 September 2022.
3. The application was accompanied by the following:-
 1. Tenancy agreement for let of the property from 17 April 2017.
 2. Notice to quit dated 25 August 2022.
 3. S33 notice dated 25 August 2022.
4. The application was incomplete and the tribunal wrote to the applicant on 1 September 2022 asking for the AT5 and s11 notice. The applicant responded that date with a query, stating:

Hi is it not a AT6 I need? I don't want to offer them another tenancy I want them evicted can u send me the homelessness act form? Where do I get that from?

5. The tribunal responded by providing a link to the guidance for submitting and application in terms of rule 66 and making it clear that the tribunal cannot provide legal advice. No further information has been received from the applicant.
6. I have reviewed this application today. The applicant has failed to respond to a request for further information and provide the AT5. Even if the AT5 had been produced and it was clear that a short assured tenancy had been constituted, there are a number of difficulties with the application.
7. Firstly, the notice to quit is invalid. It does not tie in with the ish date in the lease of 17 April. It is dated 25 August 2022 and states that the tenant has to leave the property on 31 August 2022. This is not the ish date and it is only 6 days' notice. The minimum period of notice at common law is 40 days. The notice to quit cannot therefore be relied upon in bringing the tenancy to an end.
8. Secondly, the s33 notice is invalid. Like the notice to quit, it is dated 25 August 2022 and gives a 6 day notice period of 31 August 2022. S33 of the Housing(Scotland) Act 1988 provides:

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the [F1 First-tier Tribunal] [F2 shall] [F2 may] make an order for possession of the house if [F3 the Tribunal] is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating; [F4 [F5 and]]

~~F6~~(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house [F7, and

(e) that it is reasonable to make an order for possession].

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the [F8 First-tier Tribunal] makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

[F9(5)For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.]

Textual Amendments

F1Words in s. 33(1) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 44\(a\)\(i\); S.S.I. 2017/330, art. 3, sch.](#)

F2Word in s. 33(1) substituted (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020 \(asp 7\), s. 17\(1\), sch. 1 para. 3\(1\)\(4\)\(a\)](#) (with [ss. 11-13, sch. 1 para. 10](#))

F3Words in s. 33(1) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 44\(a\)\(ii\); S.S.I. 2017/330, art. 3, sch.](#)

F4Word in s. 33(1)(b) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\), s. 79\(2\), sch. 5 para. 2\(3\)\(a\); S.S.I. 2017/346, reg. 2, sch.](#) (with [reg. 6](#))

F5Word in s. 33(1) repealed (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020 \(asp 7\), s. 17\(1\), sch. 1 para. 3\(1\)\(4\)\(b\)](#) (with [ss. 11-13, sch. 1 para. 10](#))

F6S. 33(1)(c) and word repealed (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\), s. 79\(2\), sch. 5 para. 2\(3\)\(b\); S.S.I. 2017/346, reg. 2, sch.](#) (with [reg. 6](#))

F7S. 33(1)(e) and word inserted (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020 \(asp 7\), s. 17\(1\), sch. 1 para. 3\(1\)\(4\)\(c\)](#) (with [ss. 11-13, sch. 1 para. 10](#))

F8Words in s. 33(4) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 44\(b\); S.S.I. 2017/330, art. 3, sch.](#)

F9S. 33(5) inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\), ss. 34, 41\(3\); S.S.I. 2011/270, art. 2, Sch.](#)

9. This mean that the notice period required for a s33 notice is at least 2 months unless a longer contractual period is agreed. The applicant in this case has given only 6 days.

10. Rule 8(1)(a)of the Rules allows an application to be **rejected** by the Chamber President if '*they consider that an application is vexatious or frivolous*'. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall)Magistrates Court (1998) Env.L.R.9. At page 16 he states:- "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".

11. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. There is a fundamental defect with the notice to quit and the s33 notice and the applicant has failed to cooperate with the tribunal in the execution of its duties.

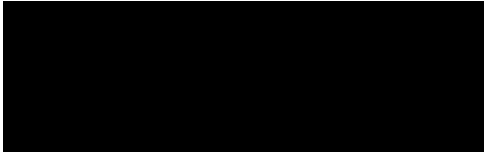
12. There has been no response to the request for further information but given the issues with the notice to quit and s33 notice in accordance with the overriding objective I am rejecting this application for the foregoing reasons.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Legal Member