



**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

14/01 Netherhill Road, Paisley, PA3 4RE (the property)

Case Reference: FTS/HPC/EV/22/0732

Parties

Mrs Lisa Davidson (Applicant)

Ms Margo Stevenson (Respondent)

Mr Charles Davidson (Applicant's Representative)

1. 10 March 2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application dated 7 March 2022. The application was made under rule 66 of the Procedure Rules and stated as the grounds applicable grounds 1, 9 and 10.
2. Appended to the application was an AT5 document, a tenancy agreement commencing 1 August 2015 with an end date of 2 August 2016 and a continuation two monthly thereafter stated in clause 5, a Notice to Quit document and a S 33

document, both dated 4 June 2021. Neither the Notice to Quit nor the S 33 document contained a specific end date but both referred to a notice period of 6 months from the date on the respective notice.

3. On 4 April 2022 the FTT wrote to the Applicant's representative: "Dear Mr Davidson Application to the First-tier Tribunal for Scotland (Housing and Property Chamber) Under Section 33 of the Housing (Scotland) Act 1988 14/01 Netherhill Road, Paisley, PA3 4RE I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: We refer to the above. Please provide the following no later than 18 April 2022:
 1. A copy of Ms Davidson's title to the property.
 2. A copy of the s11 notice sent to the local authority and proof of service.
 3. Proof of service of the notice to quit and s33 notice.
 4. We note the notice to quit does not have an ish date. Please provide your submissions regarding the validity of the notice to quit in these circumstances.If we do not receive your response to the foregoing by 18 April 2022 the President may reject your application. "
4. On 20 April 2022 the Applicant's representative replied: "Dear Sir / Madam Please find attached a copy of the deeds requested. The tenant will not contest or appeal receipt of the Section 33, Notice to leave or the "Ish" date. I look forward to hearing from you soon. Yours Sincerely Charles Davidson"
5. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 7. 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

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; and

(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

and

(c) be signed and dated by the landlord or a representative of the landlord.

1. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application does not contain a clear date by which the Respondent was required to quit the property. Even if one were to read the notice to give as the date for the end of the tenancy 4 December 2022, this would not be an ish date of the tenancy in terms of clause 5, which specifies as the initial ish date 2 August 2016 and then extends the contract two monthly thereafter. The tenancy agreements shows as the the relevant ish date would be the 2nd day of any even month of the year. The Notice to Quit must be to an ish date. A request for submissions was issued, which only yielded as an answer that the tenant will not dispute the Notice to Quit. I consider that the application is not accompanied by a valid Notice to Quit as required in Rule 66 (b) (iv) of the Procedural Rules. The Notice to Quit was not to an ish date and thus invalid. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted. This is not dependent on the agreement or otherwise of the Respondent.
2. Rule 66 (b) (v) requires that an application is accompanied by the Notice given to the Local Authority in terms of S 11 of the Homelessness (Scotland) Act 2003. This was requested from the Applicant but it was not lodged with the reply to the further information request. The requirement stated in rule 66 (2) (v) reflects S 19 (A) of the Housing (Scotland) Act 1988, which requires such a notice to be served where a landlord raises proceedings for possession of a house let on an assure tenancy. The Applicant has not submitted the required notice. The lodging requirements are not met and S 19A has not been complied with.
3. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit and without the required S 11 notice to the Local Authority. The application is therefore 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

4 May 2022