

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PAMELA WOODMAN, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL HOUSING AND PROPERTY CHAMBER ("the Tribunal")
UNDER THE 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 Rules")

in connection with

33 Jerviston Court, Jerviston, Motherwell ML1 4BS ("the Property")

Case Reference: FTS/HPC/EV/17/0503

Samuel Wightman, 38 Mountlockhart, Uddingston, Glasgow G71 7TQ ("the Applicant")

Piotr Daniel Ulrich, 33 Jerviston Court, Jerviston, Motherwell ML1 4BS ("the Respondent")

1. On 15 December 2017, an application was received from the Applicant. The application was made under rule 66 of the Rules (*Application for order for possession upon termination of a short assured tenancy*). Various documents accompanied the application. However, the application form E narrated that the ground for possession/eviction was "Ground 8 My tenant is 3 month in Arrears. Both on the date on which the Notice of Proceedings was served and at the date of the hearing, my tenant has only paid one month rent." An application for an order for possession on such a ground would require to be brought under rule 65 of the Rules (*Application for order for possession in relation to assured tenancies*).
2. One of the documents accompanying the original application was dated 20 November 2017 and entitled "NOTICE TO QUIT" from John Y Robertson, solicitors & estate agents, on behalf of the Applicant, addressed to the Respondent, stating that the Respondent was required to remove from the Property by 17 February 2018.
3. The application was considered by the Chamber President and a letter was issued to the Applicant dated 27 December 2017 seeking clarification as to whether the application was based on rule 65 or rule 66 of the Rules. That letter also requested further information/documentation from the Applicant (including a complete copy of the tenancy agreement, the section 11¹ notice to the local authority and evidence of service of the notice to quit and section 33² notice on the Respondent). It also highlighted a discrepancy in the section 33 notice with regard to the date on which the Respondent was required to remove. The section 33 notice, which was dated 20 November 2017, included the following text: "I/we require vacant possession as at 17, February 2018. The tenancy will reach its termination date as at that date and I NOW GIVE YOU NOTICE THAT YOU ARE REQUIRED TO REMOVE FROM THE PROPERTY ON OR BEFORE 17 FEBRUARY, 2017". Therefore, the date on which the Respondent was stated in the section 33 notice as being required to remove was both 17 February 2018 and 17 February 2017.
4. In response to the letter dated 27 December 2017, the Applicant confirmed that the application was made under rule 66 of the Rules and provided further information/

¹ Homelessness etc. (Scotland) Act 2003, as required by section 19A of the Housing (Scotland) Act 1988

² Housing (Scotland) Act 1988

documentation.

5. A copy "SHORT ASSURED TENANCY AGREEMENT" dated 18 August 2017 ("**Tenancy Agreement**") was provided by the Applicant. The Tenancy Agreement stated that the tenancy would commence on 18 August 2017 and would end on 17 February 2018, unless the Tenancy Agreement was "not brought to an end by either party on the end date", in which event it would "continue thereafter on a monthly basis until ended by either party".
6. A letter was provided to the Tribunal by the Applicant dated 20 January 2018 ("**the 20 January 2018 Letter**") in the following terms and to an unstated addressee:

"Dear Sir

Please excuse the typing error in the last paragraph of the Notice to Quit.

Should have read

I NOW GIVE YOU NOTICE THAT YOU ARE REQUIRED TO REMOVE FROM THE PROPERTY ON OR BEFORE 17TH FEBRUARY 2018.

[signature]"

The Tribunal presumed that this letter referred to the error in the section 33 notice, rather than an error in the notice to quit.

7. The Applicant also provided to the Tribunal a section 11 "Notice by Landlord of Proceedings for Possession" in which the Applicant confirmed that the legislation under which proceedings were being notified was "Section 36(6A) (notice to local authority of proceedings for possession of house let on short Scottish secure tenancy) of the Housing (Scotland) Act 2001".
8. By letter dated 6 February 2018, the Tribunal again sought confirmation as to whether the Applicant would like to have his application processed under rule 66 or rule 65. It noted that "You confirmed by email on 8th January 2018 that you wished to proceed under Rule 66. However, the Tenancy Agreement has been produced and the ish date does not occur until 8th [sic] February 2018. Raising the Application under this ground is therefore premature." It also noted that the Applicant should "serve the Section 11 Notice on the Local Authority stating the correct type of tenancy and provide us with a copy".
9. By e-mail on 8 February 2018, the Applicant confirmed again that he would like to proceed with his application under rule 66 of the Rules.

DECISION

10. The Legal Member considered the application in terms of rules 5 and 8 of the Rules. These Rules provide:

"Requirements for making an application

5. (1) *An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*
(2) *The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*
(3) *If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

(4) *The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

“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.”*

11. **After consideration of the application form E, the attachments thereto and subsequent information/documentation provided by the Applicant, the Legal Member considered that the application should be rejected on the basis that it would not be appropriate to accept the application, as is provided for in rule 8(1)(c) of the Rules.**

REASONS FOR DECISION

12. The Applicant was asked to confirm (on more than one occasion) if he wished the application to proceed under rule 65 or rule 66 of the Rules and confirmed (on more than one occasion) that he wanted it to proceed under rule 66 of the Rules.
13. Rule 66 of the Rules relates to an application made under section 33 of the Housing (Scotland) Act 1988.
14. The ish date (i.e. the end date) of the tenancy, as stated in the Tenancy Agreement, had not yet been reached. The stated ish date was 17 February 2018.
15. In terms of section 33(1)(c) of the Housing (Scotland) Act 1988, the Tribunal may not make an order for possession in relation to a short assured tenancy unless and until that short assured tenancy has reached its ish. Therefore, it would not be competent at the current time for the Tribunal to issue the order sought. The application under rule 66 of the Rules was premature and so it was not appropriate to accept it. Prior to any order being issued, the merits of the application would also require to be considered, which they had not been at this stage.
16. It was not yet known whether (or not) the Respondent would remove from the Property on or before 17 February 2018.
17. The section 11 notice to the local authority incorrectly referred to the legislation under which proceedings were being brought as being section 36(6A) of the Housing (Scotland) Act 2001. This was highlighted by the Tribunal in its letter dated 6 February 2018 in which it asked for evidence of a section 11 notice having been served on the local authority “stating the correct type of tenancy”. This evidence was not provided to the Tribunal and was required.
18. In addition, in the letter from the Tribunal dated 27 December 2017, the Applicant was asked

to provide "evidence of service of the Notice to Quit and Section 33 Notice on the tenant". This evidence was not provided to the Tribunal and was required.

19. Compliance with rule 66(b)(iii) of the Rules is one of the mandatory requirements for lodgement of an application (under rule 66) in terms of rule 5 of the Rules. Rule 66(b)(iii) requires that a copy of the "notice given to the tenant under section 33(1)(d)" of the Housing (Scotland) Act 1988 be provided to the Tribunal as part of the application pack. Section 33(1)(d) refers to a landlord having "given to the tenant notice stating that he requires possession of the house".
20. The section 33 notice narrated that the Applicant required vacant possession of the Property from the Respondent but incorrectly referred to the date by which the Respondent was required to remove as being both 17 February 2017 and 17 February 2018. Therefore, it contained a discrepancy. The 20 January 2018 Letter did not cure this discrepancy, whether or not such letter was sent to the Respondent. However, (a) the notice to quit narrated a removal date of 17 February 2018, (b) the section 33 notice was dated the same date as the notice to quit, (c) the tenancy had not existed as at 17 February 2017 (according to the start and end dates set out in the Tenancy Agreement) and (d) as at the date of the section 33 notice (namely 20 November 2017), 17 February 2017 was a date in the past and only 17 February 2018 was a date in the future. The Legal Member made no decision as to whether or not the section 33 notice dated 20 November 2017 met the mandatory requirement in terms of rule 66(b)(iii) because she considered that to be a matter to be considered as part of any future application (should the Applicant wish to make one if the Respondent did not remove from the Property). However, the Applicant might wish to take legal advice on this point prior to submitting any such future application.

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 the delegated powers of the Chamber President, 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.

P Woodman

Pamela Woodman
Legal Member
15 February 2018