



**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

48 Beauly Court, Halglen, Falkirk FK1 2QP

Case Reference: FTS/HPC/EV/20/2056

Grant Inglis ("the applicant")

Stuart Graham ("the respondents")

1. On 24 September 2020 the First-tier Tribunal Housing and Property Chamber (FTT) received an application dated 14 September 2020 from the applicant. The applicant stated the application was made under Rule 66 of the Procedural Rules, being an application for order for possession upon termination of a short assured tenancy in terms of S33 of The Housing (Scotland) Act 1988 (the Act).
2. The application was accompanied by a photograph of a S 33 notice to a Vicky Allardyce dated 22 January 2020 stating as the date of removal from the property 1 April 2020. The document showed the signature but no date of said signature by the said Vicky Allardyce. The applicant also submitted a photograph of part of a document which appears to be one page from a Notice to Leave form under the Private Housing

(Tenancies) (Scotland) Act 2016, a photograph of 2 pages of a tenancy agreement between the applicant and the said Vicky Allardyce and a brief note stating that the tenant had moved out and her partner and children had remained in the property, which explains the difference between the tenant named in the tenancy agreement and the respondent in the application.

3. The reason for the application stated on the brief note in the supplementary documents is states as the need to sell the property. In the application the applicant states it is because he requires the house to be empty to rewire it.
4. By letter of 14 October 2020 the FTT in terms of Rule 5 (3) of the Procedure Rules requested further information to be provide as the application in the form presented did not meet the lodging requirements of an application under Rule 66. The FTT wrote: “Your application has been referred to a legal member. The legal member requests further information from you as follows:
 1. Please provide a full copy of the tenancy agreement;
 2. Please provide a copy of the form AT5 served prior to creation of the tenancy;
 3. Please provide a copy of the Notice to Quit and proof of service on the tenant. The document you have provided with the application is a Notice to Leave which applies to tenancies created after 1 December 2017;
 4. Please provide confirmation of the date the tenant signed for delivery of the section 33Notice;
 5. No AT6 was attached to your application. If you have one and intend to rely upon it, please provide a copy with proof of service on the tenant;
 6. Please provide a section 11 Homelessness Notice and proof of service on the local authority.You may wish to take advice on your application. The Tribunal is a judicial body and cannot provide you with advice. Advice may be obtained from a solicitor, CAB or other independent advice body.” The date for a reply was stated as 28 October 2020 and the applicant was advised that if the information was not provided by that date the application may be rejected. No reply was received.
5. By letter dated 11 November 2020 the FTT again wrote to the applicant reiterating the request for the information as stated in the letter of 14 October 2020 and giving until 25 November 2020 for a reply. No reply was received.

6. The documents are referred to for their terms and held to be incorporated herein.

DECISION

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."

After consideration of the application, the attachments and correspondence from the

Applicant, the Tribunal considers 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.

1. The Applicant had been given ample notice by the Tribunal of the issues identified regarding missing information and the lack of documents to fulfill the lodging requirements.
2. The application at present does not meet the lodging requirements for an application under Rule 66, which is the Rule stated in the application, as it was not accompanied by the documents required in terms of Rule 66 (b) (i), (ii), (iv) and (v) as stated above.

3. The application did not include a full copy of the tenancy agreement, did not include the AT5 documents, did not include a valid Notice to Quit, did not include a S 11 Notice to the Local Authority.

4. As the lodging requirements for an application under S 33 Notice of the Act are not met, it would not be appropriate for the FTT to accept the application. 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
3 December 2020