



**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

78 Queens Crescent, Livingston, EH54 8EG (the property)

Case reference FTS/HPC/EV/21/2576

Parties

Mrs Rehana Mahmood (Applicant)

Mrs Tracey Meechan (Respondent)

Elliot Estates Property LTD. (Applicant's Representative)

1. On 19 October 2021 the First –tier Tribunal Housing and Property Chamber (FTT) received an application for an order for possession for the property. 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 copy of an unsigned tenancy agreement for the property naming as the landlord the Applicant, a Notice to Quit dated 17 March 2021 for the date of 18 September 2021 and a S 33 notice with the same dates, a S

11 Notice copy and copy letters and rent statement from the Applicant to the Respondent as well as an incomplete and undated AT6 document.

3. By letter of 16 November 2021 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: “Before a decision can be made, we need you to provide us with the following: For FTS/HPC/EV/21/2576 - ‘Please provide the following information: 1. Evidence of service of the section 11 Notice upon the local authority; 2. Evidence of service of the Notice to Quit and Form 33 upon the tenant; 3. A copy of the Form AT5 served on the tenant before commencement of the tenancy agreement. ... Please reply to this office with the necessary information by 30 November 2021. If we do not hear from you within this time, the President may decide to reject the application. “
4. In reply on 30 November 2021 the Applicant’s representatives wrote: “Hi Brid, Thanks for getting back to me regarding the additional documents requested. We have already attached everything we had to the initial application, however for your reference, please see the attached documents again. The AT5 is not attached as at the moment, we cannot locate this. Elliott Estates was sold in December 2020 to new owners, and it seems as though we cannot locate this part of the document. We believe it may have been lost whilst the transfer of ownership was taking place. The owners are still keen to pursue a notice of eviction as it has now been over 8 months since no rent has been received and the tenant has now overstayed her notice for more than 9 weeks. This has now been going for a long period of time and we have followed instructions given by the Scottish Associations of Landlords. We hope you can look into this, as you can imagine the landlords are now getting impatient with the length of time this has already taken. If you need further information, please do not hesitate to contact me.”
5. By letter dated 15 December 2021 the FTT again wrote again in the following terms: “Before a decision can be made, we need you to provide us with the following: 1. You have provided a further copy of the section 11 notice. This is not what was requested. Please provide evidence that this was sent to the Local Authority, such as a copy of the email or tracking number and track and trace report if it was sent by post. 2. You have provided a further a further copy of the Notice to Quit and section 33 notice. Again, this is not what was requested. Please confirm how and when the notices were served on the Respondent and provide evidence of this. 3. Please note that you must provide a copy of the AT5 notice or other evidence that a valid AT5 notice was given to the tenant before the tenancy was created. This is required to establish that the tenancy is a short assured tenancy. Please provide the required evidence. 4. Please provide a signed copy of the tenancy agreement as the copy lodged is unsigned and possibly incomplete. ... You may wish to take legal advice before responding Please reply to this office with the necessary information by 29 December 2021. If we do not hear from you within this time, the President may decide to reject the application.

6. The representatives replied on 5 January 2022: "My colleague Akash is dealing with this. He is the director at Elliott Estates however at the moment, he does not have an email address related to Elliott Estates, therefore replying to you via SpotHost. I have forward the request onto Akash, however he has indicated that we have supplied you with all the information that we have with regards to the property and therefore we would like to put this case forward for consideration, the landlord has not received rent for the last 10 months, and the current tenant have overstayed their notice period by 4 months. We really need the Tribunal to consider everything since a very long period of time has already passed. We currently do not have any further information to provide other than everything that was already submitted, which included majority of the paperwork."
7. 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 AT5 document required under Rule 66 (b) (ii) of the Rules of Procedure as stated above.
3. The missing AT5 document means that the lodging requirements required for an application of this nature are not met. There are, however, other avenues available to the Applicant. The process set out for assured tenancies does not require this document to be produced and the Applicant would be able to consider using that process with the appropriate required documents. However, this is not what the current application seeks to do.
4. As the lodging requirements for an application under Rule 66 of the Rules of Procedure and 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

18 January 2022