



**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

Case reference FTS/HPC/EV/22/3904

**Parties**

**Mr Glenn Oldbury (Applicant)**

**Ms Joanna Jeleniewska (Respondent)**

**14A North Road, Lerwick, Shetland, ZE1 0PN (House)**

1. On 23.10.2022 the First –tier Tribunal Housing and Property Chamber (FTT) received an application for an order for recovery of possession for the property. The Applicant initially made the application under rule 65 but then clarified that it is 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 Notice to Quit with and a S 33 notice, both dated 17.4.2022 and also included the tenancy agreement, an AT6 notice stating as the ground that they landlord wishes to sell the property.
3. The FTT wrote to the applicant on 21.11.2022 in the following terms: Before a decision can be made, we need you to provide us with the following: 1. Evidence of your registration as a landlord 2. We note that there is a joint owner of the property. Please advise whether you

wish to add the joint owner as an additional Applicant or alternative provide written consent from the joint proprietor to make this application. 3. Your comments on the validity of the Notice to Quit. We note that the term of the tenancy is said to be for 12 months, although the commencement date is 21/12/2012 and expiry date is 01/12/2013. Given that the tenancy was not terminated on the expiry date, the tenancy renewed on the same terms. The date provided in the Notice to Quit should coincide with the ish date (termination date) of the tenancy. 4. Evidence of service of the Notice to Quit and form AT6 on the tenant. 5. A copy of the Section 11 Notice served on the local authority, as required by the Homelessness Etc (Scotland) Act 2003, together with evidence of service. Please reply to this office with the necessary information by 5 December 2022.

4. On 21.11.2022 the Applicant wrote: 3. My original Notice to Quit and AT6 (copies you have) had a tenancy termination date of 21/10/22. I understand the need to arrange this date to coincide (as you say "ish") with the termination date of the tenancy. This would therefore be around 01/12/22. This is just 10 days away. See notes in para 4. 4. I can re-sign another Notice to Quit and AT6 (and give them to the tenants) but with such a short period, from now until that date, is this likely to be received favourably? Back in April we gave the tenants 6 months notice (because we felt this was the right thing to do) but giving them 10 days notice with new paperwork might not be enough. I would be keen to avoid waiting 1 year + 10 days if I could.
5. A S 11 notice was provided with an email from the Applicant dated 26.11.2022 as was a fresh Notice to Quit dated 25.11.22 for an end date of 5.12.22, a new S 33 notice with the same dates and a new AT6 notice with the same dates. No service confirmation was provided for any of these documents. A letter from the joint owner was also attached. The Applicant stated that the new notices had been emailed to the tenant.
6. The tenancy agreement states that the initial term is from 21 12.2012 to 1.12.2013. The tenancy agreement is on a form headed Tenancy Agreement for an Assured Shorthold Tenancy, which is not a tenancy type recognized in Scotland.
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 has not provided a valid Notice to Quit. The first Notice to Quit document dated 17.4.2022 did not give the date by which the Tenant is required to quit the property to a valid date. This was accepted and recognized by the Applicant in his email of 21.11.2022. The Applicant then issued a fresh Notice to Quit on 25.11.2022 with an end date of 5.12.2022. This Notice to Quit is not valid as it does not give the tenant the irreducible minimum notice period of 28 days stated in S 112 of the Rent (Scotland) Act 1984. Thus I find that the application was not accompanied by a valid Notice to Quit and does not meet the lodging requirement of rule 66 (b) (iv).
2. No AT5 document was not provided. Thus the application does not comply with the lodging requirement stated in rule 66 (b) (ii).
3. For the sake of completeness I would also add that the application at no point met the requirements for lodging a valid application under rule 65 either because the AT6 notices were invalid as they did not state a valid ground in terms of schedule 5 of the Housing (Scotland) Act 1988. Ground 10, as the Applicant accepted, is not applicable because there was not Notice given by the tenant and the sale of the property is not a valid ground for possession in terms of schedule 5. The comments regarding the Notice to Quit equally apply to the lodging requirements for rule 65. As the tenancy form used relates to an English tenancy type, the grounds for possession listed in the tenancy agreement do not match the grounds stated in schedule 5 of the Housing

(Scotland) Act 1988 and thus the option of proceeding on an AT6 document alone without a valid Notice to Quit as set out in s 18 (6) of the said Act could not apply in this case regardless of which ground an AT6 notice may be issued for this tenancy.

4. As the lodging requirements for an application under rules 65 and 66 of the Rules of Procedure 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-McFatrige**

Petra Hennig McFatrige

Legal Member

14 December 2022