



**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

Pulcree Farmhouse, Rusko House, Gatehouse of Fleet, DG7 2BS

Case reference FTS/HPC/EV/21/0317

Parties

Mr Richard Gilbey ("the applicant")

Mr Mark Vincent ("the respondent")

1. The First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 10 February 2021 from the applicant’s representatives G.M. Thomson and Co. The application was made under Rule 66 of the Procedural Rules, application for order for recovery of possession on termination of a short assured tenancy in terms of s 33 of the Housing (Scotland) Act 1988.
2. The application was accompanied by an AT5 form and a tenancy agreement which was described as a Short Assured Tenancy. Clause 2 of the tenancy agreement set out that the tenancy would be for 6 months commencing on 8 February 2013 and terminating on 9 August 2013 and month to month thereafter. The application was also accompanied by a Notice to Quit and a S 33 notice both dated 4 August 2020 for a date of 8 February 2021 and confirmation that both documents were served by Sheriff Officers on 7 August 2020.

The Tribunal also received a S 11 notice with proof of service.

3. The application part 5 entry was that vacant possession is required for refurbishments.
4. On 24 February 2021 the Tribunal wrote to the applicant's agents asking for clarification of their understanding of the ish date, as this appeared to be wrongly stated.
5. The applicant's representatives wrote to the Tribunal on 25 February 2021: "*It is the landlords position that ish is 8th February, per the Lease, Notice to Quit, and Section 33 Notice. The claimforms incorrectly states this to be 9th February I would be grateful if you would allow the claim to be amended so as to state that the ish is 8th February per the Notice's failing which I will withdraw the claim and resubmit it.*"
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 notice by the FTT of the issues identified regarding problems with the Notice to Quit.
2. The application at present does not meet the lodging requirements for an application under Rule 66, which is the Rule stated in the amended application, as it was not accompanied by the document required in terms of Rule 66 (b) (iv) because there is no valid Notice to Quit.

3. A Notice to Quit requires to be issued to an ish date of the tenancy. The Short Assured Tenancy submitted in evidence stated in clause 2 “and terminating on the 9th day of August 2013 and month to month thereafter.” Clearly the ish date of the tenancy as per clause 2 is thus the 9th day of any month and not the 8th day as suggested in the email of 25 February 2021. The Notice to Quit submitted in evidence was for 8 February 2021 and thus not for an ish date of the tenancy. In this case the Notice to Quit calls upon the tenant to leave on the date prior to the ish and there is no explanation as to why in this case a notice to a date other than an ish could be valid to terminate the lease. No explanation or representations were submitted to state why the Tribunal should find the notice valid in these circumstances.
4. Although the email stated that the Tribunal should allow amendment of the date in the application, it is not a date in the application that is the issue, it is the date stated on the Notice to Quit served on 7 August 2020, which cannot now be amended retrospectively. The Notice to Quit was not to an ish and thus not valid in this case. The lease was not validly terminated and thus had not reached its ish.
5. The Tribunal also notes that the form used for the Notice to Quit did not conform to the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended by the First –tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 as it referred to the court and not to the First-tier Tribunal for Scotland Housing and Property Chamber.
6. As the lodging requirements for an application under S 33 Notice of the Act and Rule 66 of the Procedural Rules are not met, it would not be appropriate for the FTT to accept the application. The application is rejected on that basis.

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
10 March 2021