

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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 Rules")

in connection with

213 Ritchie Park, Johnstone, PA5 8JL

**Case Reference: FTS/HPC/EV/18/1499**

**Mrs Michelle Byrne ("the Applicant")**

**Mr Kenneth McEnhill ("the Respondent")**

The Application was lodged under Rule 66 of the Chamber Procedural Rules on 19th June 2018, being an application by a private landlord for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the Application:

- (i) Tenancy Agreement
- (ii) Copy AT5
- (iii) Copy section 33 (1)(d) Notice
- (iv) Notice To Quit
- (v) Copy AT6
- (vi) Section 11 Notice

The property was let to the Respondent by the Applicant under a Short Assured Tenancy Agreement dated 13<sup>th</sup> October 2017. The term of the lease is from 13<sup>th</sup> October 2017 until 13<sup>th</sup> April 2018. The lease goes on to state at paragraph 17 that this Short Assured Tenancy may be ended by, amongst other things, the Landlord serving a Notice To Quit terminating the tenancy at the end date and also giving two month's (sic) prior written notice that possession of the house is required in terms of section 33 of the Housing (Scotland) Act 1988. This is also the period of notice required by the Act.

Both the section 33(1)(d) notice and the Notice to Quit are dated 23<sup>rd</sup> January 2018, and both given the date to quit as 13<sup>th</sup> February 2018.

A Form AT6 has also been lodged, but the Application is raised under Rule 66 rather than Rule 55.

## **DECISION**

I considered the application in terms of Rule 8 of the Chamber 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. "*

- 2 After consideration of the application and supporting documentation, I consider that the application should be rejected on the basis that it is not appropriate to accept it in terms of Rule 8(1) (c) of the Procedural Rules.

## **REASONS FOR DECISION**

In terms of the tenancy agreement and the legislation two months' notice must be given to bring the tenancy to an end. . The Notice to Quit and Section 33 Notice are both dated 23<sup>rd</sup> January 2018, and both give the removal date as 13<sup>th</sup> February 2018 and accordingly the notices are invalid.

Even if the Application were proceeding under Rule 65 the Notice to Quit is still invalid.

For these reasons I am rejecting the 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 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.

A Kelly

Miss Alison Kelly  
Legal Member  
25<sup>th</sup> June 2018