

**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDE, 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

38 Kinneaddar Street, Lossiemouth, Moray IV31 6AT

Case Reference: FTS/HPC/EV/18/0716

THOMAS STUART BROWN, 9 GLENBURN DRIVE, INVERNESS IV2 4ND ("the Applicant")

PETER FYFE, 38 KINNEDDAR STREET, LOSSIEMOUTH, MORAY, IV31 6AT("the Respondent")

1. On 27 March 2018 an application was received from the applicant. The application was made as an application under Rule 66 of the Rules being an application by virtue of SECTION 33 of the Housing (Scotland) Act 1988 for recovery of possession on termination of a short assured tenancy.
2. Rule 66 (b) requires the application to be accompanied by (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 the landlord that the tenancy is a short assured tenancy; and (iii) the notice given to the tenant under S 33 (1) (d) of the 1988 Act.
3. The Application included as evidence a Notice to Quit, a S 33 Notice and form AT6 as well as Sheriff Officer execution of service for these documents. No S11 Notice and no tenancy agreement were included. Not AT5 notice (notice by landlord that the tenancy is a short assured tenancy) was included.
4. The Applicant was advised by letters of 27 March 2018 to provide the S 11 Notice. This was submitted by him with a letter dated 23 March 2018.
5. The title sheet for the property showed two joint owners and the Applicant was asked by letter dated 18 April 2018 to provide either an amendment of the application or a letter from the joint owner with her consent to the application. He was also asked for further explanation of the legal basis for the application, which was shown as "The Property is required for sale" in the application and was asked to explain the lack of a copy of the tenancy agreement.
6. In his letter of 13 May 2018 the Applicant provided as further explanation that agency, which is no longer in his service, had failed to provide him with a copy of the current lease and a statement that he considers the details provided in the application under no 5 as adequate.
7. Consent from the joint owner was provided in form of a letter from Davina McIntyre Meggison dated 13 May 2018.
8. By letter dated 21 May 2018 further information was requested of the Applicant. In particular when the tenancy agreement was signed, the start date, end date, monthly rental and the terms for tacit relocation. The Applicant was advised that in order for an application under Rule 66 to proceed the AT5 information must be provided. He was advised to take legal advice and to consider to withdraw the Rule 66 application and consider an application under

Rule 65.

9. The Applicant by letter of 25 May 2018 provided a copy of a previous Notice to Quit and an email exchange between him and his former agents KTY Properties and between the Applicant and the Respondent.
10. None of the information requested in the letter of 21 May 2018 was provided and in particular no AT5 copy or any information regarding this was included.
11. There is no documentation confirming that the tenancy the matter relates to is a Short Assured Tenancy.

DECISION

12. The Legal Member 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.”

13. **After consideration of the application the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

14. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v*

North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.

15. The issue identified in this action is whether the type of lease/agreement the matter relates to is a short assured tenancy, which is the type of tenancy to which actions under Rule 66 are appropriate. There is no copy of the lease agreement and no copy of the AT5 document.
16. The Applicant had been asked to provide this. In the absence of a copy of the lease/tenancy agreement he did not provide information regarding the provisions for tacit relocation and other information requested.
17. The application does not meet the requirements under Rule 66 as it does not provide the necessary information about the tenancy terms and does not include, as required under Rule 66 (ii) the notice by the landlord that the tenancy is a short assured tenancy.
18. The application is misconceived and therefore rejected in terms of Rule 8 on the basis that it is frivolous.

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.

P H McFatridge

Petra Hennig McFatridge

Legal Member

6 June 2018