



**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/22/3913

**Parties**

**Me Terrance Kearney (Applicant)  
Mrs Gladys Normand, Mr James Normand (Respondent)**

**10 Pirnmill Road, Salcoats, North Ayrshire, KA21 6DG (House)**

1. On 25.10.2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 66 of the Procedure Rules from the Applicant. It also received an application under rule 65, which was eventually withdrawn. On 8.11.2022 the Applicant further provided an amended page for the S 66 application with the address, which he stated had been incorrectly stated in the original document now corrected. On that form the Applicant, however, again indicated the application was under rule 65 but again referred to this being a Short Assured Tenancy.
2. Immediately upon receipt of the initial application the FTT requested further documents as the application was incomplete. The list stated the S 11 notice, the S 33 notices, the AT5, the tenancy agreement and the Notice to Quit. The Applicant

eventually lodged an AT5 document, a tenancy agreement commencing 24.9.2014 with an initial end date of 24.3.2015 and a continuation monthly thereafter stated in clause 3, a Notice to Quit addressed only to the second named Respondent for the date of 26.9.2022 and a reminder letter again only to the second named Respondent of the expiry of the Notice on 26.9.2022.

3. The FTT had advised the Applicant that a S 11 notice and S 33 notices were required and requested an explanation how the Notice to Quit could be valid as it was not issued to an ish date of the tenancy.
4. The Applicant did not provide a S 33 notice for the Respondents and a S 11 notice as requested and required. He stated that LAS/SAL had advised him to use the date of 26.9.2022 on the Notice to Quit.
5. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

## DECISION

6. 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."*

7. After consideration of the application, the attachments and correspondence from the Applicant, I consider 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**

### **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; and

(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

and

(c) be signed and dated by the landlord or a representative of the landlord.

1. Despite the reference to rule 65 on the amendment of the application on 8.11.2022 the Applicant clearly wished to proceed with an application under rule 66 of the Procedure Rules as he had repeatedly stated he wished to withdraw the application under rule 65 and only proceed with the application under rule 66.
2. The decision is made on the basis that the application was made under rule 66. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged with the application requires the tenants to quit the premises on 26.9.2022. The tenancy agreements shows as the relevant ish date the 24th day of any month of the year. The Notice to Quit must be to an ish date. A request for submissions was issued, which only yielded as an answer that the date was advised by SAL. I consider that the application is not accompanied by a valid Notice to Quit as required in Rule 66 (b) (iv) of the Procedural Rules. The Notice to Quit was not to an ish date and thus invalid. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
3. The Notice to Quit was only issued to the second named Respondent. No Notice to Quit was issued to the joint tenant. This would be required for a valid application.
4. Rule 66 (b) (iii) requires that an application is accompanied by the s 33 notice. This would have to be valid to be a notice which could be considered to fulfill that requirement. No S 33 notice has been provided.
5. Rule 66 (b) (v) requires that an application is accompanied by the Notice given to the Local Authority in terms of S 11 of the Homelessness (Scotland) Act 2003. This was not provided.
6. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit, S 11 notice and without the required S 33 notice. The lodging requirements for such an application have not been met. It would not be appropriate for the FTT to accept an application which does not meet the lodging requirements.
7. The application in terms of rule 66 is thus rejected.
8. For the avoidance of doubt, the lodging requirements for an application under rule 65 are also not met. The required S 11 notice was not included and no ground for recovery of possession in terms of schedule 5 of the Housing (Scotland) Act 1988 was stated. No valid Notice to Quit and no AT6 was submitted. The application is therefore also rejected as an application under rule 65 because it would not be appropriate for the FTT to accept an application that does not meet the lodging requirements.

### **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  
Legal Member  
7 February 2023