

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

36 Steps Road, Irvine, KA12 9EY

Case Reference: FTS/HPC/EV/19/1105

Mr Philip Murtagh ("the Applicant")

Miss Elaine Hart ("the Respondent")

The Application was lodged erroneously under Rule 65 of the Chamber Procedural Rules on 10th April 2019. The Applicant was asked to correct it but has not done so. The Application, despite the Rule number used, purports to be an application by a private landlord for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the Application:

- (i) Copy Tenancy Agreement
- (ii) Copy AT5
- (iii) Section 33 (1) (d) Notice
- (iv) Notice to Quit
- (v) Notice Given to Local Authority
- (vi) Proof of Service of Notices by Sheriff Officer

The Tenancy Agreement state as follows:

“2. DATE OF ENTRY AND DURATION

The date of entry under this lease shall be **Thursday 9th March 2017** (“the Date of Entry”) (regardless of the date or dates on which this Lease is signed by the Landlord and the Tenant) and this lease shall endure for the period to **Sunday 10 September 2017** (“the Expiry Date”), both dates inclusive. If the Tenant wishes to vacate the subjects on Sunday 10 September 2017 then the Tenant must give the Landlord’s agents not less than **two months’ notice in writing** their intention to vacate the subjects on Sunday 10 September 2017. If the agreement is not brought to end by either party on Sunday 10 September 2017, it will continue from month to month thereafter until terminated by prior written notice in accordance with the provisions of this lease given by either party to the other.”

The Notice To Quit and Section 33 Notice are both dated 24th January 2019, and both give the termination date as Tuesday 9th April 2019. It is stated in bold, and then another twice in the lease that the original tenancy ends on Sunday 10th September 2017. 9th April 2019 is not an ish date, and therefor the notices are incompetent.

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 I consider that it 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

The Notice To Quit and Section 33 Notice are both dated 24th January 2019, and both give the termination date as Tuesday 9th April 2019. It is stated in bold, and then another twice in the lease that the original tenancy ends on Sunday 10th September 2017. 9th April 2019 is not an ish date, and therefor the notices are incompetent.

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.



Mis...
Legal Member
13th May 2019