



**DECISION AND STATEMENT OF REASONS OF MARTIN J.MCALLISTER
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 Procedure Rules")

in connection with

43 Stonebank, Ladywell, Livingston, EH54 6HG ("the Property")

Case Reference: FTS/HPC/EV/22/2484

Gordon Menzies, 11 Maclean Terrace, Blackridge, West Lothian, EH43 8SJ ("**the Applicant**")

Anne Marie McBeth and Graham Apsley, 43 Stonebank, Ladywell, Livingston, EH54 6HG ("**the Respondents**")

DECISION

The Application is rejected.

1. An application, dated 21st July 2022, was received from the Applicant by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT). The application was made under Rule 66 of the Procedure Rules.
2. The application was accompanied by various documents including the relevant tenancy agreement and a Notice to Quit.

3. The Application stated that recovery of the Property was sought under Section 33 (1) of the Housing (Scotland) Act 1988 ("the 1988 Act").
4. The relevant short assured tenancy agreement was dated 27th November 2022 and stated that the tenancy commenced on 22nd November 2015 and came to an end on 22nd May 2016. Clause 3 of the document stated:

"If the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated under Clause 17 of this agreement."

Clause 17 of the agreement contained *inter alia* the following provision with regard to ending of the Short Assured Tenancy:

"By the Landlord serving on the Tenant a Notice to Quit terminating the tenancy at the end date and also giving two months' prior written notice that possession of the house is required in terms of Section 33 of the Housing (Scotland) Act 1988."

5. A Notice to Quit and notice under Section 33 (1) (d) of the 1988 Act was submitted by the Applicant. It was dated 15th May 2022 and stated that the Applicant required possession of the Property on 15th July 2022.
6. On 23rd August 2022 the FTT wrote to the Applicant on certain matters and sought a response.
7. The Applicant was asked to advise why he considered it appropriate for the application to be considered for determination since it appeared that, on the basis of the date of the Notice served on the Respondents, they had not been given two months' notice to leave the Property.
8. The Applicant was asked to advise why he considered it appropriate for the application to be considered for determination since the date on the Notice to quit should have been 22nd July 2022 rather than 17th July.
9. On 24th August 2022, the Applicant responded:

9.1 He said that, although the Notice to Quit had been dated 15th May 2022, it

had been posted on 12th or 13th May and that the evidence of posting had been submitted to the Tribunal.

9.2 In relation to the ish date, the Applicant stated *“as for the ish date I wasn’t really aware of that or I would have made the end of the tenancy the 22nd of the month, I thought I had done my research right but I missed that and I apologise. I would like for you to consider my application as I now know that it should have been the 22nd and not the 15th totally my fault, I know that the law must be upheld but I was a mistake on my behalf, hopefully you can see past it and take it forward, I know the tenants won’t fight the eviction.”*

DECISION

10. I considered the application in terms of Rules 5 and 8 of the Procedure Rules. I also had regard to the provisions of the Housing (Scotland) Act 1988.

Rule 5 provides

(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

Rule 8 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."

Housing (Scotland) Act 1988 (As amended by the Coronavirus (Scotland) Act 2020)

33. Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall may make an order for possession of the house if the Tribunal is satisfied—

- (a) that the short assured tenancy has reached its finish;
- (b) that tacit relocation is not operating; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

11. 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

12. There are two potential difficulties. The first is the failure to give two month's notice in terms of section 33(2) (ii) of the 1988 Act. The Applicant's position is that he submitted proof of posting to the Tribunal which evidenced that he Notice had been posted on 12th or 13th May 2022. It seemed unusual that a document would be posted prior to its date. Furthermore, no such evidence of posting was with the papers lodged by the Applicant

13. The second difficulty is that the Applicant was seeking to recover the Property at a date other than at its ish. The Applicant now accepts that he made an error in this regard.

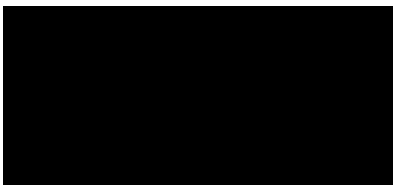
14. I considered that, even if had been satisfied that two months' notice had been given to the Respondents, the Applicant's failure to serve the appropriate notice was insurmountable. In terms of the 1988 Act, I was not satisfied that the short assured tenancy had reached its end on 15th July 2022 and accordingly the application falls to be rejected.

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.



Martin J. McAllister,
Legal Member
First-tier Tribunal
16th September 2022