



**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/23/2468

**Parties**

**Mr Mark Briscoe (Applicant)**

**Ms Georgina Ingram (Respondent)**

**Rent Locally (Applicant's Representative)**

**Flat 3, 7 Arthur Street, Paisley, Renfrewshire, PA1 2PD (House)**

1. On 25.7.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application under rule 65 of the Procedure Rules from the Applicant. The application was accompanied by a Tenancy Agreement commencing 18.11.16 stating in clause 3 that it will continue to 18.5.17 and thereafter month to month, an AT5 document dated 18.11.16, an undated and unsigned AT6 document stating as the

date in part 4 12.7.23 and as the ground that the tenancy has come to an end, a Notice to Quit document dated 21.7.23 to the end date of 20.7.23, an undated and unsigned S 33 notice to 20.7.23, S 11 notice to the local authority without indication as to which legislation applied and an email sending same on 24.7.23. The Applicant stated the reason for the application was that the property was to be sold and included as a further document an agreement to sell the property with an agent.

2. On 26.7.23 the FTT wrote to request further information in the form of evidence how the AT6 and notice to quit had been served.
3. On 27.7.23 the applicant's agent replied by email that the application was to be made under rule 66 rather than 65 and the service had been carried out by posting the documents through the tenant's letter box because she does not use email and did not want it posted. The email stated the tenant had confirmed receipt by telephone. No dates were mentioned in said email.
4. On 21.8.23 the FTT wrote again to the agent with the following request and a reply by date of 4.9.23: 1. We note that there is a joint proprietor of the property. Please advise whether she is to be added as an additional applicant or alternative provide a mandate from her consenting to the applicant raising these proceedings. 2. You have advised that the notices were posted through the tenant's door. Please provide a statement from the person who delivered the notices, providing details of when the notice to leave was served. 3. Please advise on what date and by what method the section 33 notice was served on the tenant. 4. Please provide your submissions on the validity of the notice to quit. We note that term of the tenancy was from 18 November 2016 to 18 May 2017 and continued on a monthly basis. The date on the notice to quit does not appear to coincide with the ish date and the notice to quit therefore appears to be invalid.
5. No reply was received.
6. The documents contained in the case file are referred to for their terms and held to be incorporated herein.

## **DECISION**

7. 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."*

- 8. 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. 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 20.7.23. The tenancy agreements shows as the relevant ish date the 18th day of any month of the year. The Notice to Quit must be to an ish date. A request for submissions was issued and not answered.
2. The applicant has also failed to evidence that the Notice to Quit gave the minimum statutory notice time and failed to evidence that it was actually served on the tenant. No date for service was provided, the Notice to Quit is dated 21.7.23, which is actually the date after the notice stated in the document, 20.7.23, expired.
3. 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. It appears to be dated the date after the notice stated in the document expired. The contractual tenancy continues. The requirements of an application have to be fulfilled for the application to be accepted.
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. A document referred to in the cover letter as a S 33 notice was included with the application but does not given the date when it was issued and served. This was simply left blank. The Applicant has not evidenced that the notice gave the required 2 months notice stated in S 33(2) of the Housing (Scotland) Act 1988.
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. The notice provided was incomplete as it did not indicate the legislation under which the

proceedings were taken.

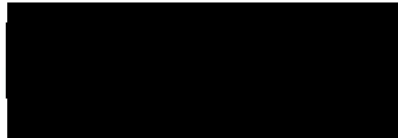
6. The Applicant had been given the opportunity to provide representations regarding the S 33 notice service, the Notice to Quit and its' service and the issue of the joint owner. The Applicant has ignored that request. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit and without the required S 33 notice. The lodging requirements for such an application have not been met. The application in terms of rule 66 is thus 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.**



**Petra Hennig McFatridge**

**Legal Member**

**2 October 2023**