



**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

7 Linum Grove, Kirkcaldy, KY1 2HJ (the property)

Case reference FTS/HPC/EV/22/2060

Parties

Hums Investments Ltd (Applicant)

Mr Jacek Czadek, Mrs Malwina Czadek (Respondent)

Delmor Estate Agents Ltd (Applicant's Representative)

1. On 28 June 2022 the First-tier Tribunal Housing and Property Chamber (FTT) received an application for an order for possession for the property. The Applicant's agent stated the application was made under Rule 66 of the Procedural Rules, being an application for order for possession upon termination of a short assured tenancy in terms of S33 of The Housing (Scotland) Act 1988 (the Act).
2. The application was accompanied by two Notices to Quit dated 8 December 2021 for the date of 7 May 2022 and two unsigned S 33 notices dated 8 December 2021 to 13

June 2022, a S 11 Notice copy and a cover email.

3. On 29 June 2022 the FTT wrote: “The following further information is required from you before your application can proceed to the Chamber President for consideration: • The tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give. • The notice by landlord that the tenancy is a short assured tenancy (AT5) Please reply to this office with the necessary information by 6 July 2022, otherwise the application may be rejected.”
4. In answer to this a copy of a tenancy agreement for the property naming as the landlord the former owner, was produced. The AT5 document was not provided.
5. By letter of 17 August 2022 the FTT in terms of Rule 5 (3) of the Procedure Rules requested further information to be provide as the application in the form presented did not meet the lodging requirements of an application under Rule 66. The FTT wrote: “Before a decision can be made, we need you to provide us with the following: • Please provide written authorisation from the applicant(s) that the representative is instructed to act for them in this matter. • Please provide a copy of evidence of service for the notices to quit. • Please provide a copy of evidence of service for the section 33 notices. • The section 33 notices are unsigned and undated please provide signed and dated copies if available, or confirm the date when they were signed. • Please provide copy of evidence of service for the section 11 notice. • Please provide evidence that the AT5 Notice was served on the tenants prior to the creation of the assured tenancy. Please reply to this office with the necessary information by 31 August 2022. If we do not hear from you within this time, the President may decide to reject the application. “
6. No reply was received.
7. The documents are referred to for their terms and held to be incorporated herein.

DECISION

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."

After consideration of the application, the attachments and correspondence from the Applicant, the Tribunal considers 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

Relevant Rules of Procedure:

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;

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

1. The Applicant had been given ample notice by the Tribunal of the issues identified regarding missing information and the lack of documents to fulfill the lodging requirements.
2. No evidence was produced to show how and when the notices under S 33 and the Notices to Quit had been served on the tenant. The S 33 notices were unsigned. The agent had not produced written authority from the Applicant. The S 11 notice was submitted but no evidence was produced to show how and when it was given to the local authority.
3. The Applicant or agent would have had the opportunity to provide the missing information but did not reply to the letter requesting this information. The AT5 document had been initially requested by the FTT in an “application incomplete” letter on 29 June 2022 and there had been ample opportunity to address this issue.
4. The application at present does not meet the lodging requirements for an application under Rule 66, which is the Rule stated in the application, as it was not accompanied by the AT5 document required under Rule 66 (b) (ii) of the Rules of Procedure as stated above.
5. As the lodging requirements for an application under Rule 66 of the Rules of Procedure and S 33 Notice of the Act are not met, it would not be appropriate for the FTT to accept the application. The application is 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.

P Hennig-McFatrige

Petra Hennig McFatrige
Legal Member
3 October 2022