



**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/22/3614

**Parties**

**Mr Colin McKillop (Applicant)**

**Mr Tomasz Stopa, Miss Agnieszka Demczuk (Respondent)**

**Cluny Estate Agents (Applicant's Representative)**

**9 Reiket Lane, Elgin, Moray, IV30 6HT (House)**

1. The application under rule 66 of the Procedure Rules and S 33 of the Housing (Scotland) Act 1988 (the Act) was received by the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) on 4.10.22. Appended to the application was an

AT5 document, a tenancy agreement commencing 12.1.13 with an end date of 13.7.13 and a continuation monthly thereafter, two Notices to Quit documents and two S33 documents, all dated 7.7.22 with recorded delivery service evidence for both Respondents on 8.7.22.

2. On 27.10.22, 23.11.22 and 15.12.22 respectively the FTT queried with the Applicant's representatives the validity of the Notice to Quit as this was issued to the date of 12.9.22 rather than the 13<sup>th</sup> day of the month. The reasons for the relevance of the date was set out in the FTT's letters.
3. On 27.10.22 the FTT received the following reply: With regards to the valid 'Ish' date being the 12th day of the month- The tenancy was created on the 12th which also corresponds to the payment date of the tenancy. As the tenancy ran month to month since January 2013 we believe this to be the correct 'Ish' date. We did not create the tenancy but I believe it should have read from 12th January 2013 to 11th July 2013 as opposed to the 13th.
4. On 22.12.22 the FTT received the following reply: With regards to the 'Ish date', we have nothing further to add. If we need to start this process again then so be it but we would like you take into consideration the time this takes when the owner really needs to sell.
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. Rule 66 (b) (iv) requires the Applicant to lodge a Notice to Quit. The Notice to Quit lodged gives the date of 12.9.22 as the date on which the Respondents should quit the premises. The tenancy agreement shows as the the relevant ish date would be the 13th 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 there may have been a mistake in the tenancy agreement but it did not clarify how this arose. The representations that the agent would have stated the date differently is not relevant in that context. What is clear is that the actual tenancy agreement contained a clear provision regarding the start and initial end date and the monthly continuation thereafter. The tenancy agreement having been agreed as it was states the end date of the 13<sup>th</sup> day of the month. The FTT had given the Applicant ample opportunity to make legal submissions and provide an argument as to why the date should be considered an ish date but no satisfactory legal argument was provided. 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.
2. It would not be appropriate for the Tribunal to accept the application without the required valid Notice to Quit. The application is therefore 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.**



Legal Member  
13 January 2023