



**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

24 Alexander Drive, Aberdeen, AB24 2XE

Case Reference: FTS/HPC/EV/21/0517

Mrs Alison Iveson ("the applicant")

Mr Adeyinka Alase ("the respondent")

Martin & Co Aberdeen (Applicant's Representative)

1. The First –tier Tribunal Housing and Property Chamber (FTT) received an application dated 8 March 2021 from the applicant's representatives. The application was made under Rule 66 of the Procedural Rules, application for recovery of possession in relation to a short assured tenancies in terms of S 33 of the Housing (Scotland) Act 1988.
2. The application was accompanied by the tenancy agreement which was on the face of it a Short Assured Tenancy commencing 12 January 2017 with an initial period up to and including 11 July 2017, which date is described in clause 2 as "The Expiration Date". Tacit relocation was excluded. The tenancy was to then continue on a two monthly basis thereafter. The application was also accompanied by a Notice to Quit and a S 33 notice both dated 24 July 2020 for a date of 12 February 2021 and a S 11 notice to the local authority referring to proceedings under S 56 of the Private Housing (Tenancies)

(Scotland) Act 2016 rather than S 33 of the Housing (Scotland) Act 1988. There was no AT5 document and no documents confirming service of the S 33 notice and Notice to Quit were included.

3. The application part 5 entry was : “The landlord is looking to take possession of their property once again with the intention to sell.”
4. The Tribunal wrote to the applicant’s representative requesting further information in letters of 22 March, 15 April, 6 May, 26 May, 22 June and 16 July 2021. In these letters the Tribunal asked for representations as to why and how the date of 12 February 2021 could be considered a valid ish date given the terms of the tenancy, whether the applicant wished to change the application to one under Rule 65 and submit an AT6 notice given the reason stated on the application, how service of the documents was effected, a submission of a correct S 11 notice quoting the applicable legislation and advised the applicant’s representative to consider taking some legal advice.
5. The replies to the requests ultimately disclosed that no AT6 document was ever served although an AT5 document was finally submitted. The information on service of the S 33 and Notice to Quit was not forthcoming. There were no representations regarding the issue of the validity of the notice to the date of 12 February 2021 and a further S 11 notice quoted as the applicable proceedings those under S 36 of the Housing (Scotland) Act 2001 for Scottish Secure Tenancies rather than for assured tenancies under the Housing (Scotland) Act 1988.
6. 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 in relation to assured tenancies

65. Where a landlord makes an application under section 18(1) (orders for possession) 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;

(iii) the name and address of the tenant; and

(iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b) be accompanied by—

(i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

- (ii) a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy;
 - (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and
 - (iv) evidence as the applicant has that the possession ground or grounds has been met; and
- (c) be signed and dated by the landlord or a representative of the landlord.

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 problems with the Notice to Quit, the S 33 notice and the S 11 notice and the completion of the application regarding the ground stated and the wording used.
2. The application at present does not meet the lodging requirements for an application under Rule 66, which appeared to be the Rule the application was to be amended to, because no AT6 document was ever submitted, the ground was not identified by

reference to the grounds of eviction listed in schedule 5 of the Housing (Scotland) Act 1988, no evidence for the ground described was ever produced and no representations were made as to how the Notice to Quit could be considered valid although it had been issued for the date following the ish date of the tenancy. The new S 11 notice is as defective as the first S 11 notice supplied.

3. The applicant's representative confirmed no AT6 notice was ever issued. The application was not formally amended to Rule 65. The application is not a valid application under Rule 65 because the lodging requirement under Rule 65 (b) (ii) is not met.
4. The S 11 Notice was based on the wrong legislation, namely on proceedings under the Housing (Scotland) Act 2001 for Scottish Secure Tenancies rather than proceedings under the Housing (Scotland) Act 1988 for Assured Tenancies.
5. A Notice to Quit requires to be issued to an ish date of the tenancy. The Notice to Quit is not valid because it was not issued to an ish date. The original ish date of the tenancy was the 11th July 2017 and thereafter two monthly (Clause 2 of the tenancy agreement) and thus cannot be to the 12th day of the month and cannot be in the month of February. No explanation or representations were submitted to state why the Tribunal should find the notice valid in these circumstances. No proof of sending the Notice to Quit was provided. Without a valid Notice to Quit the lodging requirement under Rule 65 (b)(iii) is not met.
6. The original application was made in terms of Rule 66 of the Procedural Rules. The Tribunal went to great lengths to explain what was required if the applicant wished to proceed on that basis. The application as submitted cannot be a valid application under Rule 66. Again the s 11 notice was defective, no proof of service was provided. The Notice to Quit was defective as stated above. Thus the requirement in Rule 66 (b) (iv) is not met. The S 33 Notice would be valid if correctly served, however no evidence of service was produced despite repeated requests.

7. As the lodging requirements for an application under S 33 Notice of the Act and Rule 66 of the Procedural Rules as well as under S 18 of the Act and Rule 65 of the Procedural Rules are not met, it would not be appropriate for the FTT to accept the application. The application is rejected on that basis.

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
5 August 2021