

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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

3 Emmock View, Emmock Woods, Dundee, DD4 9FJ

**Case Reference: FTS/HPC/CV/19/1737**

**Mrs Pamela Hume, Higham Ferrers Rushden, Northants, NN10 8LJ ("the applicant")**

**Ms Michelle Furey, 30 Ballumbie Drive, Dundee, DD1 2AJ ("the respondent")**

On 6 June 2019, an application was received from the applicant's representative. The application was made under Rule 70 of the Procedural Rules being an application for civil proceedings associated with a tenancy. Along with the application form the applicant's representative lodged a tenancy agreement, payment record, email to tenants and confirmation of end date of tenancy.

By letter dated 20 June 2019 the Tribunal asked the applicant's representative for further information. The Tribunal asked for confirmation as to what had happened to the deposit of £1200 referred to in Para 1.10 of the lease and asked for receipts and

clarification regarding the reference to “extensive damage” in the application and what sum was being claimed for this. A response was requested by 4 July 2019 and the applicant’s representative was advised that if the Tribunal did not hear back by this date the President may decide to reject the application. The applicant’s representative replied by email dated 28 June 2019 with photographs and a copy email detailing costs and confirmation that the £1200 deposit had been requested from Safe Deposits Scotland. The Tribunal wrote again to the applicant’s representative on 12 July 2019 asking for details of the outcome of the deposit adjudication process as this had a material impact on what sums may be recoverable in terms of the application. A response was requested by 26 July 2019. The applicant’s representative responded by email to say that Safe Deposits Scotland had advised that there had been no response from tenant and had given the tenant fifteen days to respond. The applicant’s representative advised that they would contact the Tribunal further after this date. The applicant’s representative emailed again on 26 July 2019 to confirm the deposit of £1200 had been paid. The Tribunal wrote again to the applicant’s representative on 9 August 2019 asking the following:

- *‘We note that the deposit of £1200 has been returned to you. Please therefore confirm what sum you are seeking in terms of this application. Please also confirm the breakdown of said sum in terms of whether it relates to rent arrears or repairs costs. If you are seeking repair costs please provide vouching in the form of invoices or receipts for any sums sought.*
- *We note the tenancy agreement is in the name of Michelle Furey and Bruce Wilkie. However the application is in the sole name of Michelle Furey. Please clarify whether Mr Wilkie is to be included as a joint respondent in the application.’*

The Tribunal requested a response by 23 August 2019 failing which the President may decide to reject the application. No response has been received.

## **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, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

**REASONS FOR DECISION**

The Tribunal has requested further information from the applicant's representative in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

The applicant's representative has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's representative's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant's representative is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

### **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.

Anne Mathie

Anne Mathie  
Legal Member  
6 September 2019