



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

27 Bingham Terrace, Dundee, DD4 7HQ ("the property")

Case Reference: FTS/HPC/CV/19/1921

Edik Rafailov, 5 Selwyn Road, Birmingham, B16 0SH ("the Applicant")

Janet Baxter, Address Unknown ("the Respondent")

1. By application received on 21 June 2019 the Applicant seeks a payment order in terms of Rule 91 of the Rules. A copy tenancy agreement and rent statement were lodged in support of the application. In the application the Respondent's address is stated as "unknown". On 24 June 2019 the Tribunal issued a letter to the Applicant advising that an application for service by advertisement was required if the Applicant was unable to provide an address for the Respondent. On 26 June 2019 the Applicant submitted an application for service by advertisement. Between 8 July 2019 and 28 February 2020 a number of letters were issued to the Applicant advising that further information was required in connection with the application and the request for service by advertisement. With regard to the latter, the Tribunal advised the Applicant that information and evidence had to be provided of the steps taken to obtain an address. The Applicant initially responded by saying that the Respondent had been asked to provide an address, and had failed to do so. When advised that evidence such as a trace report from a tracing agent or Sheriff Officer was required the

Applicant advised that this had not been undertaken due to cost. The Tribunal's letters of 31 January and 28 February 2020 advised the Applicant that if he failed to provide the necessary evidence of attempts to obtain an address, such as a trace report, for the request for service by advertisement, the application may be rejected. No response to either letter has been received.

DECISION

2. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules. That Rule provides:-

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(4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this in the application and complete a request for service by advertisement in accordance with paragraph 5.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these rules which the applicant attempted to serve on the other party and evidence of attempted service.

(6) The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted. “

3. After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5(6).

Reasons for Decision

4. The Applicant submitted an application for service by advertisement in June 2019. The only information provided as to attempts to obtain an address that have been provided is an indication that the Applicant asked the Respondent for his address and tried to telephone him. On several occasion since the

application for service by advertisement was lodged, including letters dated 30 January and 28 February 2020, the Applicant has been directed to provide additional evidence in the form of a trace report from a tracing agent or Sheriff Officer. The Applicant has failed to respond to these request and has failed to provide the information and evidence required. As the Applicant has failed to provide h the evidence required and as the Legal member determines that the application for service by advertisement cannot be granted in the absence of this evidence, the application cannot be accepted. 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.

Josephine Bonnar
Legal Member
1 July 2020