



**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

65 Whitehall Place, Top Floor Left, Aberdeen, AB25 2PD ("the property")

Case Reference: FTS/HPC/CV/20/0358

Lydia Ofori, 76F Honor Oak Road, London, SE23 3RR ("the Applicant")

Caitlynn Dargie, Robert Forsythe, Address Unknown ("the Respondents")

1. By application received on 4 February 2020 the Applicant seeks a payment order in terms of Rule 111 of the Rules. A copy tenancy agreement was lodged in support of the application. In the application the Respondent's address is stated as "unknown". The Applicant also submitted an application for service by advertisement.
2. On 13 February 2020 the Tribunal issued a letter to the Applicant advising that the Applicant was required to provide a report from a tracing agent or Sheriff Officer in connection with the request for service by advertisement. On 20 February 2020 the Applicant responded advising that the Respondents had not provided a forwarding address when they vacated the property and had not provided the letting agent with this information when they sent an email requesting same. On 5 March and 24 April 2020 the Tribunal issued further letters by email to the Applicant directing the Applicant to provide the documentation previously requested. Both letters advised that a failure to

respond could result in the application being rejected. In response to the letter of 5 March 2020 the Applicant provided a further copy of the information previously submitted. The response to the letter of 24 April 2020 stated that the Applicant had no further information to provide and suggested that the Tribunal pay for a trace report, if this was required. On 21 May 2020 the Tribunal issued a further letter by email to the Applicant advising that it was the responsibility of the Applicant to obtain and pay for the trace report. The Applicant was again directed to provide this documentation, by 4 June 2020, or the application might be rejected. No response has been received.

DECISION

3. 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. “

- 4. 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

5. The Applicant submitted an application for service by advertisement in February 2020. The only evidence provided of attempts to obtain an address is a copy email from the letting agent to the Respondent, asking for this information. The Applicant had stated that she is unwilling to incur the cost of a trace report. On four occasions between 13 February and 21 May 2020 the Applicant has been directed to provide a trace report from a tracing agent or Sheriff Officer to support the application for service by advertisement. The Applicant has failed to provide this document and has failed to respond to the letter of 21 May 2020.
6. As the Applicant has failed to provide 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
2 July 2020