

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS BY THE 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

13 Birkenside, Gorebridge, Midlothian, EH23 4JA

Case Reference: FTS/HPC/CV/18/2904

The Parties:-

Let Right Scotland, 2 Main Street, Gorebridge, Midlothian, EH23 4JA ("the Applicant")

Mr David Williams, 69 Swan Crescent, Gorebridge, Midlothian, EH23 4UR ("the Respondent")

1. By application dated 29 October 2018 the Applicant applied to the Tribunal under Rule 111 of the Procedural Rules for an order for payment of rent arrears in relation to unpaid rent allegedly due by the Respondent.
2. A Case Management Discussion was assigned for 18th February 2019. The Tribunal subsequently attempted service of the application papers on the Respondent by Sheriff Officers but were unable to do so as the Respondent did not reside at the address. In view of the timescales for notification not having been met due to the difficulties with service, the Case Management Discussion was cancelled.
3. By letter dated 22nd February 2018 the Applicant was advised of the cancellation and asked to provide an address for the Respondent or alternatively details of steps taken to locate the Respondent in order to support service by advertisement in terms of Rule 6A of the Procedural Rules. The Applicant did not respond. By further letter dated 15th March 2019 the Applicant was asked to provide the information within fourteen days of that date, failing which the application would be rejected. The Applicant has failed to provide the information requested.

DECISION

4. The Legal Member determined to reject the application on the basis that she had

good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

5. The Legal Member considered the application together with the attachments.
6. '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 the Legal Member had to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
7. In order for the application to proceed there requires to be service upon the Respondent. Rule 6 of the Procedural Rules permits service by registered post or by email. As had been explained to the Applicant, there is also provision under Rule 6A for service by advertisement where there is no known address for the Respondent. However Rule 6A can only be triggered where the Tribunal is satisfied that attempts have been made to locate the Respondent first and that the use of service by advertisement is therefore reasonable in all the circumstances.
8. In this case the Applicant has failed to provide any response to the Tribunal's requests for further information. In the absence of a forwarding address for the Respondent and no evidence of attempts having been made to locate him, there is no prospect of service of the application. Therefore the Legal Member must conclude that the application is futile and cannot succeed.
9. The Legal Member therefore determined that the application had no prospect of success on the basis that the Applicant could not comply with Rule 6 or 6A of the Procedural Rules in terms of service upon the Respondent. Accordingly having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Tribunal concluded that the application was frivolous and rejected it under Rule 8(1)(a) of the Procedure Regulations.

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.



Ruth O'Hare
Legal Member