



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Rules")**

in connection with

33 Strathclyde Path, Uddingston, G71 7QD

Case Reference: FTS/HPC/CV/19/2092

**Andrew Mallon, c/o Happy Lets Ltd, 56 Cadzow Street, Hamilton, ML3 6DS
("the Applicant")**

Julie Ann Porteous, whereabouts unknown ("the Respondent")

1. On 5 July 2019 Happy Lets Ltd, on behalf of the Applicant, lodged an application with the Tribunal in terms of Rule 111 of the Rules, being an application for civil proceedings arising from a private residential tenancy. The Applicant seeks an order for payment of the sum of £578.56. A number of documents were lodged in support of the application including a copy tenancy agreement, rent statement and photograph schedule taken by the letting agent, Happy Lets Ltd
2. A request for further information was issued to the Letting Agent on 8 July 2019. In terms of the request the Applicant was asked to provide a signed application, as the application lodged was unsigned, and a letter of authority from the Applicant authorising the agent to act on his behalf. The Applicant was also asked to provide an address for the Respondent or complete a request for service by advertisement if her whereabouts are unknown. The Applicant failed to respond. A further letter was issued on 30 July 2019 asking

for a response to the request for information by 13 August 2019. No response was received.

DECISION

3. The Legal Member considered the application in terms of Rule 8 of the Chamber 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.”

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 it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

Reasons for Decision

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; "*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 has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The application lodged with the Tribunal seeks an order for payment in terms of the Rule 111 of the Rules. Firstly, the application is unsigned and is therefore incomplete in terms of Rule 111(c) which requires the form to be signed and dated by the Applicant. Secondly, the application has been lodged by Happy Lets Ltd but no evidence has been provided of the letting agent's authority to make the application on behalf of the Applicant. Thirdly, the address of the Respondent has not been provided nor has the Applicant made a request for service by advertisement, if the address is unknown. As a result, service of the application upon the Respondent cannot be effected. The Applicant has failed to respond to two requests for further information issued by the Tribunal requiring the Applicant to rectify the defects in the application.
7. In the absence of information requested and as the Applicant has failed to respond to requests for further information required by the Tribunal, the Legal member concludes that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

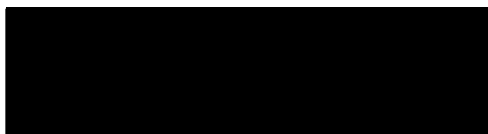
What you should do now

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
23 August 2019