



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

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

**Case reference FTS/HPC/CV/22/3306**

**Parties**

**Mr Stuart Dowden (Applicant)**

**Ms Jillian Doherty, (Respondent)**

**Mrs Marie Annetta Dowden (Applicant's Representative)**

**Ground Floor (L), 18 Campbell Street, Greenock, PA16 8AP (House)**

1. On 8<sup>th</sup> September 2022, an application was received from the Applicant. The application was made under Rule 70 of the Procedural Rules, being an application for an order for payment of money arising from rent arrears during the Respondent's tenancy of the Property.
2. The following documents were received from the Applicant's representative:-
  - a. A copy tenancy agreement
  - b. Letter from applicant's representative
  - c. Written notice
  - d. Copy bank statements
  - e. Undated letter of authority

3. The Tribunal requested further information from the applicant by letter dated 13<sup>th</sup> October 2022. The Tribunal asked for the following information:-

‘Before a decision can be made, we need you to provide us with the following:

1. You have stated under ‘Company/Organisation name’ that the Applicant is Mr Dowden, and you have gone on to insert your own name and address beneath that. This is not correct. As Mr Dowden is the sole owner of the property, it would seem that he is the correct applicant, therefore, his name should be inserted in the correct place (not as a company or organisation), followed by his address. The landlord is normally the owner of the property, and although you have provided an authorisation letter from the owner authorising you to act as landlord, it is undated and it is not clear whether this was in place before you entered into a tenancy agreement. It is unclear how you would have title and interest to act as landlord or to make this application. If you are instructed to act as Mr Dowden’s representative for the purposes of this application, your name and address should appear as representative in the application form, again, leaving the company/organisation box blank. Please consider these matters and whether you wish to make any further written representations in this regard. Please provide an amended application form clearly showing the name and address of the Applicant in the correct section, and the name and address of the representative in the correct section.
2. If you are acting as representative for the owner, please provide his written and dated authorisation, authorising you to make this application on his behalf.
3. There is only one tenant in terms of the tenancy agreement, therefore, there can only be one Respondent. Please amend the application form accordingly to show the sole tenant as Respondent.
4. You must provide a proper address for the Respondent. The application cannot be served upon her at her parents’ address unless she is now living there. If you are unable to obtain a current address for her, you may wish to make an application for Service by Advertisement, but you must first use the services of a tracing agency or sheriff officer to attempt to trace the Respondent’s current address.
5. The letter you have provided regarding your name and details is not fully legible. Please provide a legible copy.

6. Please provide a rent statement in the form of a table with columns showing rent due, rent paid and a running total of rent arrears. You may wish to use software such as Excel if available, or any other spreadsheet. If you are compiling the statement by hand, it must be legible and easily understood.
7. Please provide evidence of landlord registration. Please reply to this office with the necessary information by 27 October 2022. If we do not hear from you within this time, the President may decide to reject the application.
4. A response was received from the Applicant on 18th November after requesting further time to respond and enclosed a fresh Form F with 3 pages only changing the name of the applicant and respondent and advising she could not get a response from the Greenock registration office, providing various bank statements and giving further information about her name.
5. The tribunal wrote again on 12<sup>th</sup> December saying:-
- “We refer to the letter sent to you by the tribunal dated 13 October 2022 requesting you to provide further information in respect of a number of aspects of this application. The tribunal acknowledges receipt of your email dated 18 November 2022 which contains nine pages of additional information. Regrettably, these pages do not provide the information requested by the tribunal in its letter.*
- We note that you have instructed bailiffs to trace the respondent’s current address and the tribunal requires that information to enable the application to progress. Please provide it as soon as you have it*
- You have not provided a proper rent statement in the form requested by the tribunal. Please do so.*
- It is noted that you do not yet have evidence of the landlord registration for the landlord. Please obtain this and provide it.*
- You have not provided the letter of authorisation from the landlord which is recently dated and signed. You have indicated that he may be working abroad. Please indicate when you will obtain an up-to-date letter from him.*
- You were asked to provide an amended application form. You have provided the first three pages of what might be an amended application form but you have added a number of unnecessary hand written comments on the foot of one page. Please provide a clean copy of an amended application form*

*following the instructions contained in the previous letter.*

*The tribunal will hold this application for a further period of six weeks, taking into account the forthcoming festive holiday. If you do not provide the information requested by the tribunal (in its initial letter of 13 October) by 20 January 2023 then the tribunal is likely to reject your application.*

6. The Applicant did not respond to this request.
7. The Tribunal wrote again on 28<sup>th</sup> February 2023 after allowing further time for the Applicant to respond and once again asked for a response saying:-  
*“Your application has been referred to a legal member. The legal member responds as follows: 1. Please provide the information requested by the tribunal in its letter to you of 12 December 2022. Please provide the information requested within 14 days failing which the application may be rejected”*  
.
8. The Applicant has failed to respond to the Tribunal's requests for further information and has failed to produce the required documentation.

## **DECISION**

9. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

10.

*"Rejection of application*

*Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47, to 50, 55, 59,61,65, to 70,72,75 to 91, 93 to 95,98 to 101,103 or 105 to 111 as appropriate.*

*(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*

*(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

*(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

*(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 any 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.*

*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."*

11. 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 5(4) and Rule 8(1) (c) of the Procedural Rules.

## **REASONS FOR DECISION**

12. The Tribunal has requested further information from the applicant 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.
13. The applicant has failed to respond in full to the Tribunal's request for further information and documents, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant'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 is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

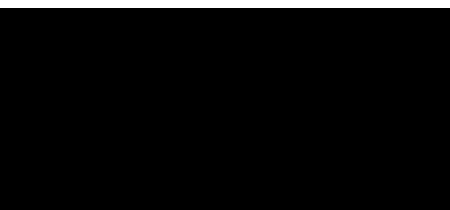
14. In particular the Applicant has not provided an address for the Respondent which is required to allow the papers to be served or an application for service by advertisement along with evidence the Respondent cannot be traced. The Applicant has not provided either of these without which the application cannot proceed 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.
15. If the Applicant traces the Respondent to a further address or has confirmation that she cannot be traced it is open to the Applicant to resubmit a fresh application giving the Respondents name and address or applying with a service of advertisement form which can be found on the Tribunal's website. The Applicant should also address the other issues raised in the Tribunal's letter in any fresh application.

### **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.



Jan Todd  
Legal Member  
23<sup>rd</sup> March 2023

