

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision in an application for Review under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) (“the Procedure Rules)

In connection with

Chamber Ref: FTS/HPC/CV/22/3306

Re: Property at (“the Property”)

Parties: Mr Stuart Dowden (Applicant)

Marie (Anne) Dowden, (Applicant’s representative)

Ms Jillian Docherty, “Sermain” 123 Newton Street Greenock

Tribunal Members:

Jan Todd (Legal Member)

DECISION

The First Tier Tribunal for Scotland (Housing and Property Chamber) (The Tribunal) determined that the Applicant’s Application for Review should be granted in the interests of justice.

BACKGROUND

1. The Applicant lodged an application for an order for payment of rent arrears in relation to a tenancy of the Property in terms of Rule 111 of the Tribunal Rules. The Application was submitted on 8th September 2022

2. On 8th September 2022, an application was received from the Applicant. The application was made under Rule 111 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. 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

The Tribunal requested further information from the Applicant by letter dated 13th October 2022. The Tribunal asked for information regarding clarification of who the applicant was and who the Applicant's representative was; why there was more than one Respondent when there was only one tenant in the lease; asking for a proper address for the Respondent as the application cannot be served upon her at another care of address unless she was living there. The Tribunal advised the Applicant that if they were unable to obtain a current address for her, they could make an application for Service by Advertisement. In addition the name and details of the applicant were not fully legible. And neither was the rent statement. 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 regarding the Applicant's landlord registration, providing various bank statements and giving further information about the Applicant's representative's name.

The Tribunal asked for further information again on 12th December and 28th February asking for further information namely:- a proper address for the Respondent or application for service by advertisement; current authorisation from the applicant and clearer rent statement.

The Request for Review

3. By letter dated 29th March 2023, the Respondent applied to the Tribunal for them to "reconsider the decision".

4. Statement of Reasons

1. Rule 39 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended Provides as follows :-

(1) The First Tier Tribunal may either at its own instance or at the request of a party review a decision, made by it, except in relation to applications listed in Rule 37 (3) (b) to (j), where it is in the interests of justice to do so.

(2) An application for review under Section 43 (2) (b) of the Tribunal's Act must

a) be made in writing and copied to the other parties

- b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties and
- c) set out why a review of the decision is necessary

(3) If the First Tier Tribunal considers the application is wholly without merit the First Tier Tribunal must refuse the application and inform the parties of the reason for the refusal.

(4) Except where paragraph (3) applies the First Tier Tribunal must notify the parties in writing

- a) setting a time limit for any response to the application by the other parties and seeking the views of the other parties on whether the application can be determined without a hearing; and

- b) may at the discretion of the First Tier Tribunal set out the First Tier Tribunal's provisional views on the application.

(5) In accordance with rule 18 the decision may be reviewed without a hearing.

(6) where practicable the review must be undertaken by one or more of the members of the First Tier Tribunal who made the decision to which the review relates.

(7) Where the First Tier Tribunal proposes to review a decision at its own instance it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First Tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals Time Limits Regulations 2016 for making an application for permission to appeal.

2. The Request for review was made by e-mail by the Respondent on 29th March 2023.

Rule 39(2) is prescriptive. It provides that an application for review "must" meet certain criteria one of which is to be "b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties and c) set out why a review of the decision is necessary"

3. I believe the Respondent's application for a review meets the criteria set out in Rule 39(2).
4. The decision was made by the Tribunal on 23rd March 2023 and was sent to the Applicant by letter on 23rd March 2023. The letter indicated any application for review must be made within 14 days. The letter also indicated the parties could also appeal the decision by intimating a request to do so within 30 days.
5. The Respondent has asked the Tribunal to review the decision within the 14 days and also asked for the decision to be appealed. I am satisfied the request for a review having been made on 29th March is timeous and therefore competent. The Applicant has set out why she is asking for a review

namely to allow further information to be accepted late and giving reasons why it is lodged late.

6. This is a review of a decision to reject an application and the decision has been made at the sifting stage where a legal member with delegated authority from the President decides whether the lodging criteria for an application are met and if so whether the application can be accepted. As such there is no other party on whom notice of this application needs to be served.
7. Due to a failure of the Applicant's representative to respond to two requests for further information which is essential for the acceptance of the application the Tribunal considered that the application had to be rejected. The Applicant's representative has requested that the decision be reconsidered as she has now provided further information and has explained why she was unable to respond timeously to the previous requests.
8. The Applicant has also indicated she wishes to appeal. As the application for review has been accepted there is no need to consider that application for appeal. The Tribunal has decided that a hearing is not necessary as there is no other party to intimate this application on and the Applicant has made adequate written representations.
9. The Applicant's representative has now confirmed that the Respondent is staying at her parent's address namely at Sermain 123 Newton Street Greenock. She has provided landlord registration details and a signed letter of authorisation from Mr Stuart Dowden the owner of the Property and applicant although it appears to be wrongly dated it has this case reference. In addition she has supplied a slightly clearer rent statement.
10. Ms Dowden has explained the reason she could not reply timeously was that she had 2 periods of Covid and her son had been recovering from surgery and that she had just completed the further information when she received the rejection decision.
11. Taking all the circumstances into account the Tribunal considers it has sufficient information now to meet the lodging criteria of rule 111 and that the representative has given a valid reason why she was not able to respond timeously. Taking this into account the Tribunal accepts it would be in the interest of justice to accept the review as otherwise the Applicant would be required to make a fresh application. The Tribunal therefore withdraws the rejection decision and accepts the application and directs that a Case Management Discussion is now scheduled for both parties to attend and make representations.

Outcome

Application for review accepted. Rejection decision withdrawn and application now accepted.



Chairing Legal Member of the Tribunal
Dated: 14th April 2023