



**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 Procedure Rules")**

**in connection with**

**11 Beneagles Court, Auchterarder ("the Property")**

**Case Reference: FTS/HPC/20/2310**

**Lee Doyle, Burnside of Ruskie ("the Applicant")**

**Kelly McPhee, address unknown ("the Respondent")**

1. By application received on 4 November 2020, the Applicant seeks a payment order in relation to arrears of rent and the cost of re-instating the property at the end of a tenancy.
2. On 18 November 2020, the Tribunal issued a letter which directed the Applicant to provide further information and documents. The Applicant was advised that an address for the Respondent was required, and if he did not have an address, an application for service by advertisement should be submitted together with evidence of attempts to obtain an address, such as a trace report from a Sheriff Officer. The Applicant responded. He stated that he did not have an address but did not submit a trace report or application for service by advertisement. Further letters were issued to the Applicant on 11 December 2020, 15 January and 8 February 2021, directing the Applicant to provide the information and documents requested or the application may be rejected. No response has been received.

## **DECISION**

3. The Legal Member considered the application in terms of Rules 5 and 8 of the Chamber Procedural Rules. Rule 5 provides:-

(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 lodgment 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 to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment.

(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 Legal Member considers that the application should be rejected in terms of Rule 8(1)(c ) which states that an application must be rejected if the Tribunal has “ good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the application cannot be accepted because the Applicant has failed to comply with Rule 5.**

### **Reasons for Decision**

5. The Applicant submitted an application for a payment order in terms of Rule 111 of the Rules. This Rule requires the Applicant to provide an address for the Respondent. This is required because the application must be served on the Respondent by the Tribunal. The Applicant did not provide an address. The Tribunal has written to the Applicant on four occasions advising him that an address is required or that an application for service by advertisement must be submitted with evidence of attempts to obtain an address, all in terms of Rule 5(4), (5) and (6) of the Procedure Rules. The Applicant has failed to respond to the last three letters and has failed to provide an address or submit an application for service by advertisement with evidence of attempts to obtain an address. The Applicant has also been directed to provide this evidence by the Tribunal, in terms of Rule 5(6), but has failed to respond.
6. The Applicant has failed to provide information required by Rule 111 of the Procedure Rules. The Applicant has also failed to provide information and documentation required by Rule 5 of the Procedure Rules. The Legal Member therefore determines that 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.

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***Josephine Bonnar***

Legal Member

13 March 2021