



**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

The Property at Top Flat, Fisherman Cottages, 98 Montague Street, Rothesay

Case Reference: FTS/HPC/EV/20/1477

Mr James Kerr, 23 Crichton Place Rothesay, PA20 9JR ("the Applicant")

Mr Sean Perry Top Flat, Fisherman Cottages, 98 Montague Street, Rothesay, PA20 0HJ

("the Respondent")

1. On 1st July 2020, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for possession of the Property and for the Tenant to vacate the property on the ground that a member of the Landlord's family required to live in the Property.
2. The applicant narrated as grounds for the eviction that there were over £2000 rent arrears and also alleged the Tenant was in breach of the lease agreement and had engaged in anti-social behaviour.
3. No documents or evidence supporting the application or grounds of eviction were enclosed with the application.

4. The Tribunal requested further information from the applicant by letter dated 13th August 2020, in particular the Tribunal asked for the following information:-
 - *Copy tenancy agreement*
 - *Copy Notice to Leave*
 - *Proof of service of the Notice to Leave*
 - *Copy Section 11 Notice to the Local Authority as required in terms of S 56 of the Private Housing (Tenancies) (Scotland) Act 2016*
 - *Proof of service of the Section 11 Notice*
 - *Explanation of the title and interest of the applicant in the matter as the title is held by H Greene Ltd and not the applicant.*
 - *Landlord registration number*
 - *Rent statement*
 - *Evidence of any other grounds raised in the Notice to Leave*
 - *Replacement page of the application stating clearly the grounds in terms of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 on which the order is sought in part 5 of the application and the relevant documents lodged for this in part 6 of the application.*
5. The Tribunal requested a reply with the necessary information by 27 August 2020 and advised that “If we do not hear from you within this time, the President may decide to reject the application.”
6. No response was received and the Tribunal wrote again on 4th September 2020 advising that failure to respond by the 18th September may result in that application being rejected.
7. The Applicant has not replied and has failed to respond to this request.

DECISION

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

10. 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

11. 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.

12. The applicant has failed to respond to the Tribunal's request for further information, 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.

13. Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Tribunal Rules of Procedure) requires that the application must :-

a. State

- i. the name address and registration number if any of the landlord,
- ii. the name address and profession of any representative of the landlord,
- iii. The name and address of the tenant ()if known and
- iv. The ground or ground of eviction

b. Be accompanied by

- i. Evidence showing that the eviction ground or grounds has been met
- ii. A copy of the notice to leave given to the tenant
- iii. A copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

14. None of the mandatory requirements for lodgement required by Rule 109 (b) have been lodged and the Applicant has not responded to requests for those

items to be lodged.

15. 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.

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

Jan Todd
Legal Member
6th October 2020