



**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

14 Courthill Street, Dalry, KA24 5AP (House)

Case Reference:-FTS/HPC/EV/21/3060

Axelrod Capital Ltd (Applicant)

Hovepark Lettings Ltd (Applicant's Representative)

Ms Fatou Ndiaye (Respondent)

1. On, 19th December 2021 an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules, being an application for an order for eviction of the Tenant from the Property.
2. The following documents were enclosed with the application:-
 - Copy tenancy agreement
 - Copy notice to leave
 - Mandate from applicant to authorize the letting agent to act for him
 - Copy S11 notice
 - Copy statements of rent

3. The Tribunal requested further information from the applicant by letter dated 22nd December 2021. This letter referred to this application and the Tribunal asked for the following information:-

"I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: Your application has been assessed by a legal member and the following issues have been identified:

1. Part 2 of the Notice to Leave does not seem to have been completed, as no grounds are ticked. If you have provided the incorrect Notice to Leave, please provide a copy of the correct Notice.

2. You state in the application form and on the Notice to Leave that you are proceeding under ground 17, when it would appear to be ground 12. Please provide an amended application to show the correct ground. You may wish to consider the validity of the Notice to Leave given the errors identified.

3. Please provide evidence of service of the Notice to Leave on the Respondent. 4. The rent statement is unclear. There are references to £50 shortfalls during months when it would appear that no rent has been paid. Please provide an explanation and a clear rent statement. Please reply to this office with the necessary information by 5 January 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 23rd December 2021 which stated *"Please find attached proof of service of the NTL. It was emailed to the tenant The tenants UC payments are being sent to the landlord directly so you will see that I have raised credits for the payments made directly to them. (425 pcm) We did ask for it to come directly to us but unfortunately UC have never amended. We are in receipt directly of the arrears payments. Please let me know if you need anything else. Ground 12 amended on the additional page also attached. Apologies – typo on my part. I do not believe the grounds were ticked on part 2 of the NTL, only specified in Part 3. I have also attached proof of the service of the NTL by email."*
5. The Tribunal wrote again on 13th January 2021 asking for further clarification in relation to this application

“I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: Thank you for your response of December. We still however require some clarification and would be obliged if you could provide your response to the following matters:-

1. You have applied under Rule 65 whereas your tenancy agreement and action appears to relate to Rule 109 which is an application for eviction of a private rented tenancy, please advise if you wish to amend your rule number to 109?

2. You have not provided a fresh rent statement which shows clearly all the sums paid to yourself or the landlord from the tenant and the running balance. To ensure clarity for the sums you claim are due this is required could you now please provide this?

3. Finally we note your comments regarding part 2 of the Notice to leave having no grounds ticked and part 3 referring only to ground 11 and erroneously ground 17. Please provide any submissions you would like the Tribunal to consider regarding the validity of the notice to leave in respect of ground 11 and ground 12. The validity of the notice to leave is a matter that will be discussed and decided at a case management discussion, rather than at this stage, but you are invited to provide any legal submissions at this stage. Please reply to this office with the necessary information by 27 January 2022. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received and the Tribunal wrote again on reminding the Applicant that she had not replied and asking *“Please provide the information requested in the tribunal’s letter to you of 13 January 2022. Please reply to this office with the necessary information by 7 March 2022. If we do not hear from you within this time, the President may decide to reject the application.”* No response was received.

6. A final reminder was sent on 24th March 2022 asking for a response to the Tribunal’s letter of 13th January 2022 however the Applicant has not replied to this and has failed to respond to the Tribunal’s requests.

DECISION

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

8.

"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."

9. 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

10. 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.

11. 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.
12. In particular the applicant has applied for an application under Rule 65 of the Tribunal's rules which is for an application for an order for possession in relation to an assured tenancy but has failed to provide any evidence to accompany the application showing that this application relates to an assured tenancy or to provide the notice that requires to be given in terms of the Housing (Scotland) Act 1988. Instead the applicant has lodged a tenancy agreement dated 24th August 2019 and a notice to leave which would indicate the tenancy is a private rented tenancy and any application for eviction requires to be made under Rule 109. The Applicant has been invited to change their application but has not responded or indicated they wished to do so. The application is not accompanied by the required documents for a Rule 65 application and so is inherently flawed.
13. 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
Legal Member
21st April 2021