



**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/EV/19/0876

PLP O LTD 10-12 High Street Renfrew PA4 8QR TD9 9BY ("**the Applicant**")

Miss Laura Wilkinson 25 Dewar Avenue, Lochgilphead PA31 8NR ("**the Respondent**")

1. On 25th February 2019, an application was received from the applicant. The application was made under Rule 70 of the Procedural Rules, being an application for a payment order in respect of arrears of rent and for the tenant to vacate the property.
2. The following documents were enclosed with the application:-
 - Copy of tenancy agreement dated 1st February 2016 between Pip Zero Ltd and the Respondent
 - AT6 notice dated 30th January 2019 S33 Notice dated 12th February 2019
 - Notice to Quit dated 30th January 2019 requiring the tenant to leave on 1st April 2019
 - S33 notice dated 30th January 2019
 - Letter to tenant dated 30th January 2019 enclosing notice to quit and other

papers and advising the tenant that debt recovery agent may be in touch

- Rent statement showing arrears of rent of £2037.40 due at 11th February 2019
3. The Tribunal requested further information from the applicant by letter dated 26th March, in particular confirmation of the sum claimed; respect for information regarding why the owner of the property is Helen Canning, the landlord and applicant is Pip Zero and requesting evidence of the landlord's title and interest to grant the lease. The letter further advised that this application would be treated as being made under Rule 70 a claim for civil proceedings and if the Applicant wished to make a further claim for eviction that would have to be done in a separate application under Rule 65. The Applicant responded on 26th March with details of the sum sought, namely £2354.70 and confirming that Helen Canning had authorised PLPO Ltd to act on her behalf for this property.
 4. A request was then made by the Applicant for service of the application by advertisement.
 5. The Tribunal wrote again on 26th April 2019 asking for a revised Form F for an application for rent arrears specifying the new amount of rent arrears sought, i.e. £2354.70; a statement showing how this new amount is made up and a request that the Proprietor Ms Canning was happy for any order to be made to the Applicant PLPO Ltd.
 6. The Applicant responded on 7th May 2019 with a revised Form F this time however the claim was increased to the sum of £4,854.70 which included a new sum for rent previously voided and now allegedly reclaimed by the landlord. A rent statement dated 7th May 2019 was also enclosed, as was confirmation that Ms Canning was satisfied with any order being made in the name of the Applicant and Landlord.
 7. The Tribunal responded on 2nd July 2019 with a further request for information in particular requesting:-
 - a. Evidence of how the Landlord has tried to ascertain the address of the Respondent including evidence that it had engaged a tracing agent to establish the address so that the request for Service by Advertisement

could be considered.

- b. The Tribunal also requested an explanation and evidence for how the arrears arose in respect of work not done which has led to the increase in the claim of £2500.

The applicant was advised that it should respond by 16th July 2019 failing which the application may be rejected.

The Applicant has not replied since that date 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 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. 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 both Rule 5 and 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.

J.T

Jan Todd
Legal Member
12th September 2019