



**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

Case Reference: FTS/HPC/GA/21/0513

Robert Smith T/A Property Management Option ("the Applicant")

The Scottish Ministers ("the Respondent")

1. On 29 December 2020, the Applicant sent a letter to the Tribunal by email which stated that he wished to appeal against the decision to refuse his application to join the Scottish Letting Agent Register. The Applicant did not submit an application form with the letter and did not identify the Tribunal Procedure Rule or legislation under which the application was to be made. Furthermore, the letter did not identify the name and address of the Respondent. The Applicant was advised on the telephone that the application could not be registered and processed until an application form and rule number were provided. The Applicant was also sent an email with a link to the Tribunal website where the relevant form, procedure rules and guidance on the process could be found. The Applicant did not submit an application form in terms of Rule 94 until 3 March 2021.

DECISION

2. 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 lodgement have been met.

3. 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.”

Reasons for Decision

4. On 3 March 2021 the Applicant submitted an application under Rule 94 of the Procedure Rules This rule states, “Where a person makes an application under Section 41(1) (appeals) of the 2014 Act, the application must - (a) state –
 - (i) the name, address and letting agent registration number (if any) of the person,
 - (ii) the name, address and profession of any representative of the person,
 - (iii) the address of the Scottish Ministers
 - (iv) the decision of the Scottish Ministers under section 32 (to refuse to enter that person in the register or to renew that persons existing entry in the register) or under section 39 (to remove that person from the register) of the 2014 Act,
 - (v) the date the person was notified of that decision, and
 - (vi) the reasons why a person is appealing the decision of the Scottish Ministers
- (b) be made before the end of the period of 21 days beginning with the date of the notification.

5. The Applicant sent a letter by email to the Tribunal on 29 December 2020. This letter did not meet the mandatory requirements for lodgment of an application under Rule 94 as it did not specify that the application was being made in terms of that Rule, did not identify the name and address of the Respondent and did not state that the application related to a decision made in terms of Section 32 of the Housing (Scotland) Act 2014. The Applicant was notified that the application could not be registered and processed and was directed to the Tribunal website where the relevant application form and guidance as to the mandatory requirements could be found. The Applicant did not submit the an application form in terms of the Rule 94 until 3 March 2021
6. An application under Section 41(1) of the Housing (Scotland) Act 2014 and Rule 94 of the Procedure Rules must be made within 21 days of the notification of the decision by the Scottish Ministers to which it relates. There is no provision which allows an application to be entertained if it received after that date. The letter submitted by the Applicant did not meet the mandatory requirements for an application under Rule 94, when it was received by the Tribunal on 29 December 2020. The Applicant was notified but failed to address the deficiencies until 3 March 2021, when an application form with the required information was provided. Although Rule 4 of the Procedure Rules does not stipulate that an application must be made using the Tribunal application form, Rule 5 indicates that an application is held to have been made when it is lodged in the manner set out in the relevant Rule. It was not until 3 March 2021 that the application met the requirements of Rule 94 and therefore could not be “held to have been made” until that date. As a result, the application has not been submitted within the 21 day time limit specified in both the Rule and the legislation.
7. The Legal Member is therefore satisfied that there is good reason to believe that it would not be appropriate to accept the application. 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.



Josephine Bonnar, Legal Member
23 March 2021