



**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 93/8 Comely Bank Road Edinburgh EH4 1BJ**

**Case Reference: FTS/HPC/PR/20/2418**

**Mr Mathew Kay, residing at 39/8 Comely Bank Edinburgh EH4 1AG ("the  
Applicant")**

**Mr Christopher Braun , unknown  
(the Respondent)**

1. On 16<sup>th</sup> November 2020, an application was received from the Applicant. The application was made under Rule 110 of the Procedural Rules, being an application for an order for damages for a wrongful termination order.
2. The Applicant was seeking damages for wrongful termination alleging the landlord had served a notice to leave claiming he was selling the Property but had in fact rented it out shortly after the notice to leave expired. The Applicant lodged a copy Notice to leave and photographs including a for rent sign with the

application.

3. The Tribunal requested further information from the applicant by letter dated 20<sup>th</sup> November 2020. 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:*

- *Please provide a copy of the tenancy agreement and the Respondent's address.*

*Please reply to this office with the necessary information by 16 December 2020. If we do not hear from you within this time, the President may decide to reject the application.*

4. The Applicant responded by e-mail on 2<sup>nd</sup> December advising “*Please see attached Tenancy Agreement, the only address given for the Landlord in the agreement is that of RentLocally, their representative (see extract below). Will this be sufficient? Landlord Full Name (Block Capitals): MR CHRISTOPHER BRAUN Address: c/o RentLocally.co.uk, Unit 1, 109 Swanston Road, Edinburgh, EH10 7DS Signature: Signed on behalf of the landlord's agent: Mrs Liz Currie*”

5. The Tribunal wrote again on 14<sup>th</sup> December and asked

*“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:*

1. *Please provide an address for the Respondent. The Tribunal cannot accept a c/o address. If you are unable to find an address for the Respondent then you should complete a Service by Advertisement application which is available on the Tribunal website. Such an application must be accompanied by evidence of the attempts that you have made to trace the Respondent such as a report from a trace agent or sheriff officer. Please reply to this office with the necessary information by 28 December 2020. If we do not hear from you within this time, the President may decide*

*to reject the application.”*

6. The Applicant replied again by e-mail on 16th December 2020 and said “*I have sought the Address from our previous letting agency, but they are pass it on. I have attached the email chain to confirm this. Would it be possible for the Court to request the address from them directly. I have been corresponding with John Horsburgh ([john@rentlocally.co.uk](mailto:john@rentlocally.co.uk)).*” He also confirmed the landlord does not live in the UK and his landlord registration is c/o the letting agency Rent locally.

7. The Tribunal wrote again to the Applicant by letter dated 8<sup>th</sup> January 2021 saying:-

*“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 17th December unfortunately the Tribunal cannot get involved regarding addresses or any other matter required for the Application. The Tribunal is independent and is here to adjudicate on disputes it cannot assist any party. We would suggest that if you do not know the address of the landlord you ask a sheriff officer or tracing agent to see if they can trace the Landlord failing which you will be able to apply for Service by Advertisement a form for which you will find on our website and which requires evidence to show you have tried to trace the Landlord.*

*Please respond with a further address or request to Service by Advertisement within 21 days failing which your application may have to be rejected.*

*Please reply to this office with the necessary information by 29 January 2021. If we do not hear from you within this time, the President may decide to reject the application.”*

8. The Applicant did not reply to the Tribunal.
9. The Tribunal wrote one further time on 10<sup>th</sup> February 2021 requesting a response from the Applicant and evidence the Applicant had tried

unsuccessfully to trace the landlord. The Tribunal asked *"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:*

*We refer to our letter to you dated 14th December 2020, a further copy of which we enclose, and note that we have not received a reply from you.*

*Please reply to this office with the necessary information by 24 February 2021. If we do not hear from you within this time, the President may decide to reject the application.*

10. The Applicant has not responded.

## **DECISION**

11. I considered the application in terms of Rule 5 and 8 of the Procedural Rules.

Those Rules provide:-

12. *"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."*

13. 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**

14. 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.
15. The applicant has failed to respond to the Tribunal's request for further information and documents, in breach of Rule 5 and as a result mandatory information namely the Landlord's address which is required in terms of Rule 110 or an application for service by advertisement which is required to allow service on the Respondent, 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.
- 16.. 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  
10<sup>th</sup> March 2021