



**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/PR/21/1637**

**3 Portree Holiday Cottages Skye (the Property)**

**Calum Munro 11 Sconser, Isle of Skye ("the Applicant")**

**Kevin Hay 2 Rosebank Terrace Portree Isle of Skye ("the Respondent")**

1. On 6<sup>th</sup> July 2021, an application was received from the applicant. The application was made under Rule 87 of the Procedural Rules, but was seeking a payment order of £4000 in respect of rent he claimed he had paid in advance to the Landlord.
2. The Applicant lodged a copy of the tenancy agreement and copy of bank transfers showing money had been transferred to the Landlord and advised when he tried to take occupancy there was another couple living in the Property. He also lodged another application in respect of the same Property under case number
3. The Tribunal requested further information from the applicant by letter dated 23<sup>rd</sup> July 2021. The Tribunal asked for the following information:-

“Thank you for your two applications regarding the above property. The Applications both appear to be seeking the same order but are made under two different rule numbers.

1. Application number 1636 is an application under Rule 78 which relates to an action for misrepresentation by a landlord who has obtained an order for possession under a protected tenancy in terms of the Rent Scotland Act 1984. You appear to be seeking the return of monies paid in advance for the lease of a Property the tenancy of which was entered into in 2020. There is no order for possession and this does not appear to be a lease covered by the 1984 Act. The tenancy agreement you have lodged refers to the Housing Scotland Act 1988 but since December 2017 no new tenancies under that Act have been able to be created so all tenancies since then for private houses come under the Private Housing Tenancies Scotland Act 2016. A civil action arising out of a tenancy agreement under the 2016 Act is made by using Rule 111. Please advise why you believe Rule 78 and an order under S21 of the 1984 Act is relevant?

2. With regard to your application under Rule 87 (PR/1637) this again relates to premiums or loans under the 1984 Act please confirm why you believe this application is valid if the tenancy agreement was entered into in 2020 and Section 1 of the 2016 Act makes it clear that a tenancy created then would be a private residential tenancy provided “it is let to an individual and the tenant occupies it as the tenant’s only or main home and the tenancy is not one which cannot be a private residential tenancy? Supported by the Scottish Courts and Tribunals Service [www.scotcourtsribunals.gov.uk](http://www.scotcourtsribunals.gov.uk)

3. With respect to the tenancy as you do not appear to have occupied it at any time please advise if you believe it is a private residential tenancy (PRS) in terms of S1 of the 2016 Act and why? Please also confirm it is not an excepted tenancy in terms of schedule 1 which would include a tenancy created for a holiday let? If you do believe it to be a PRS you may wish to consider if you wish to raise an application using Form F and Rule 111 which is for civil applications under 2016 Act? If you do wish to change or raise a new application under Rule 111 please advise if you wish to withdraw one or both of your existing applications?

4. Please advise what steps you have tried in respect of the simple procedure

to reclaim your money and any outcome?

5. Please also advise which address is to be used for the Respondent as you have stated two? Please reply to this office with the necessary information by 6 August 2021. If we do not hear from you within this time, the President may decide to reject the application.”

4. The Applicant responded on 26<sup>th</sup> July 2021 indicating that he may have chosen the wrong rule and advising:- *Thanks for your detailed reply , I will try to answer the best I can. Firstly my simple procedure was rejected on the grounds that ' an application should be made to the First Tier Tribunal for Scotland Housing and Property Chamber, not the Sheriff Court' Secondly I applied under rule 87. And 78. as that is what I had been advised by the citizens advice bureau - I have an advisor there who looked in to the issue for me when the simple procedure had failed. I applied under both rules as I was advised to submit an application to both rules if I thought them relevant . Then your team would decipher which was most relevant and if both could be put together as one case. I think I gather from your email that my submission under these rules is wrong and that I should perhaps resubmit my claim under rule 111 ? I'm not sure If you can advise me on this ? I'm struggling to understand this passage copied from your email below - I have very little understanding of the act so am lost to answer your questions in respect to it . It's correct I never occupied the property so am unsure what that means in respect to a private residential tenancy in terms of S1*
5. The Tribunal wrote again on 9<sup>th</sup> August saying:- *“Your application has been referred to a legal member. The legal member request further information as follows: • Your application appears to be for monies claimed due arising from a Private Residential Tenancy. Such applications should be made under Rule 111. Either withdraw the current application and submit a new one or confirm you wish to amend the current application to one under Rule 111. Please reply to this office with the necessary information by 23 August 2021. 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 to the Applicant by e-mail dated 7<sup>th</sup> September saying *“We wrote to you on 9 August 2021 for*

*both applications and asked you for a reply by 23 August 2021. No reply has been received. Please now advise if you wish to amend one of the applications to Rule 111 or if you wish to withdraw both applications. If neither please provide a full answer to our first letter of 23 July 2021. It may be beneficial if you seek some further advice from your advisor in the matter. The Tribunal is an independent body and cannot advise applicants or respondents. It is up to the Applicant to submit a valid and complete application, not for the Tribunal to do this for them. If the applications remain as they currently are it is likely that these will be rejected for the reasons already given”*

7. *The Applicant responded on 20<sup>th</sup> September 2021 advising he wished to change the application made under rule 78 (case number PR/21/1636) to one under rule 111. The Tribunal then responded on 15<sup>th</sup> October 2021 stating “Thank you for your e-mail of 20<sup>th</sup> September 2021. The Tribunal has amended your application FTS/HPC/PR/21/1636 to be brought under Rule 111 and has accepted that application to proceed. Could you please confirm that you now wish to withdraw this application (FTS/HPC/PR/21/1637) as unnecessary”*

8. The Tribunal sent a further reminder on 19<sup>th</sup> November and then by letter on 17<sup>th</sup> December as the Applicant’s inbox appeared to be full and not accepting further e-mails. There has been no response to the Tribunal’s request as to whether the applicant wishes to withdraw this application in view of his other application under 21/PR/1636 being accepted.

## **9. DECISION**

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

11.

*“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."*

12. 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**

13. 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.
14. The applicant has failed to respond to the Tribunal's substantive requests 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.

15. The Applicant has failed to provide the information requested to determine whether the application can be accepted despite 3 requests being sent. Another application raised by the applicant appears to be founded on the same grounds and has been accepted and has proceeded to a case management discussion.

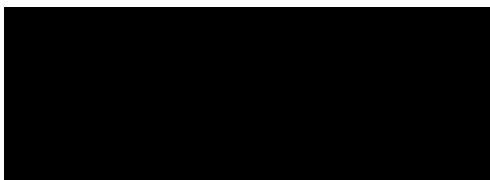
16. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

### **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  
Legal Member  
19<sup>th</sup> January 2022