



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

Ref: FTS/HPC/LA/20/1551

Re: 106E Walker Road, Torry, Aberdeen, AB11 8BR ("the Property")

**Mr Athanasios Kandias, 16 Slains Terrace, Bridge of Don, Aberdeen, AB22 8TU ("the
Applicant")**

**Aberdein Considine, 5-9 Bon Accord Crescent, Aberdeen, AB11 6DN ("the
Respondent")**

DECISION

**It was determined by the Legal Member acting under the delegated powers of the
Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the Application must be
rejected in terms of Rule 8(1).**

REASONS

- 1. On 10 July 2020, an application was received from the Applicant ("the Application"). The
Application was made under Rule 95 of the First-tier Tribunal for Scotland Housing
and Property Chamber (Procedure) Regulations, Schedule 1 ("the 2017 Rules),
being an application for to enforce the Letting Agent Code of Practice under section 48(1)
of the Housing (Scotland) Act 2014 ("the 2014 Act") and the Letting Agent Code of Practice
(Scotland) Regulation 2016.**

2. The Applicant attached a bundle of supporting documents to the Application.
3. Section 48 of the 2014 Act provides:
 - “(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.*
 - (2) A relevant letting agent is—*
 - (a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,*
 - (b) in relation to an application by a landlord, a letting agent appointed by the landlord,*
 - (c) in relation to an application by the Scottish Ministers, any letting agent.*
 - (3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.*
 - (4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.*
 - (5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.*
 - (6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.*
 - (7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.*
 - (8) A letting agent enforcement order—*
 - (a) must specify the period within which each step must be taken,*
 - (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.*
 - (9) References in this section to—*
 - (a) a tenant include—*
 - (i) a person who has entered into an agreement to let a house, and*
 - (ii) a former tenant,*
 - (b) a landlord include a former landlord.”*
4. The Letting Agent Code of Practice (Scotland) Regulations 2016 came into force on 31 January 2018 and the Letting Agent Code of Practice in Schedule 1 to the Regulations came into effect on the same date.
5. An application made in terms of Rule 95 of the 2017 Rules must
 - “(a) state, in addition to the applicant’s reasons as required under Section 48(3) of the 2014 Act-*
 - (i) The name and address of the tenant, landlord or the Scottish Ministers;*
 - (ii) The name, address, and profession of any representative of the tenant, landlord or the Scottish Ministers;*
 - (iii) The name, address and letting agent registration number (if any) of the letting agent;*
 - (iv) The name, address and profession, if known, of any representative of the letting agent; and*
 - (v) Information as to any loss suffered by the applicant as a result of the failure to comply;*
 - (b) be accompanied by a copy of the notification to the letting agent as required*

*under section 48(4) of the 2014 Act; and
(c) be signed and dated by the applicant or a representative of the applicant.*

6. The Applicant's Application form and supporting documents alleged failure to comply with the Letting Agent Code of Practice which were said to have occurred between March and October 2016.
7. On 7 October 2020, the Application was considered by a Legal Member with the delegated powers of the Chamber President. A letter was sent to the Applicant in the following terms:

"Before a decision can be made, we need you to provide us with the following:

You submitted a 250 page bundle of documents. Page 209 onwards appears to be a notification letter to the Letting Agent. Please confirm that this is the letter which was issued to the Letting Agent with the email which is at page 20 of the bundle or confirm how and when it was sent and provide evidence of this.

As previously advised the application must relate to conduct by the Letting Agent which occurred after the Code came into force on 31 January 2018. If your complaints only relate to conduct which predates this date, the Tribunal cannot consider the application. Please confirm if you wish to withdraw the application, or provide information regarding the complaints which have occurred after the relevant date."

8. On 7 October 2020, the Applicant responded to the request for further information, as follows:

*"This is the email evidence that I copied and pasted in the document, as evidence.
I hope that helps.*

Also, in regards to the application, as I said the events took place between 2016-2017, with other authorities being involved at a later stage for that period of time.

Let me know if the application is rejected on that basis".

9. The Applicant re-attached a copy of correspondence to the Respondent which had been submitted with the original Application and supporting documents.
10. On 17 November 2020, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 95 of the 2017 Rules.

11. Rule 8 provides:-

"Rejection of application

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 the further information request, it was determined that the requirements for making an application under Section 48 of the 2014 Act, the Letting Agent Code of Conduct Regulations (Scotland) Regulations 2016 and Rule 95 of the 2017 Rules have not been met.

13. The Applicant has stated in response to the request for further information that the alleged conduct occurred in 2016 and 2017, which is in the period before the duty to comply with the Letting Agent Code of Practice existed in law, the Regulations having come into force on 31 January 2018.

14. The correspondence which has been lodged by the Applicant with the Application paperwork shows that the Applicant's complaint to the Letting Agent was made in October 2016, in respect of alleged conduct in the period from March 2016 to that date. There was no legal duty to comply with the Letting Agent Code of Conduct during the said period prior to 31 January 2018.

15. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

16. What you should do now

a. If you accept the Legal Member's decision, there is no need to reply.

b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

17 November 2020