



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

Case reference FTS/HPC/CV/23/1154

Parties

Mrs Sarah Olushesi, Mr Gabriel Toyinbo (Applicant)

Merkland Residential (Respondent)

18 Aberfoyle Street, Glasgow, G31 3RR (House)

A BACKGROUND

1. On 12 April 2023 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) an application made under rule 111 of the Procedural Rules. The application documents are referred to for their terms and held to be incorporated herein.
2. The application relates to a tenancy agreement which commenced on 29 January 2023 and thus would be a Private Residential Tenancy. The landlord is not named in the lease document, the only information is that the letting agent is Merkland

Residential.

3. In the application the respondent was designed as Merkland Residential, First name Karen and the application quoted a telephone number and email address.
4. On 5 May 2023 the Tribunal wrote to the applicant for the first time requesting further information including; “•Please also provide an address for your landlord. Without an address, it is impossible for the tribunal to serve appropriate notice of any hearing upon the landlord.”
5. On 16 May 2023 the applicant replied that they did not know the name or address of the landlord as they had dealt with an agent.
6. On 15 June 2023 the Tribunal wrote again as follows: “We refer to our letter to you of 5 May 2023 and your reply of 16 and 22 May 2023. If you do not have the address of your former landlord you will require to make an application for service by advertisement. This can be downloaded from the tribunal website. You will require to show what steps you have taken to locate the respondent by providing a trace report. Please also provide evidence of the end date of your tenancy agreement.”
7. On 28 June 2023 the applicant submitted a service by advertisement form which stated they texted the agent and googled the agency, agent’s name and landlord’s name. However, the application was not accompanied by a negative trace report from Sheriff Officers or a tracing agent as previously requested by the Tribunal. The name given as the other party on the application for service by advertisement was that of the applicant’s husband and by then possible joint applicant, Mr Toyinbo.
8. On 29 July 2023 the Tribunal again wrote to the applicant as follows: “The Respondent named in the application appears to be the letting agent. An application for repayment of the deposit must be made against the landlord. Please confirm if you wish to amend the application to replace the letting agent and confirm who the landlord is. The owner of the property (and the person to whom the deposit was paid) appears to be John Burns. If you do not have an address for the landlord you must submit a request for service by advertisement. This should be submitted with a trace report from a tracing agent or Sheriff Officer as evidence of attempts to obtain an address.”
9. No reply was received by on 5 September 2023 the applicant asked if any further information was required. On 6 September 2023 the applicant stated again she did

not have an address for the landlord and stated she would like to submit a request for service by advertisement.

10. On 26 September 2023 the Tribunal wrote a final request for information stating:
“Thank you for your email of 6th September you have now confirmed you wish to raise the application against your former landlord but you have not named him. Please advise what name you wish to have as the Respondent. This is your application and we cannot provide the name. Further you confirm you wish to apply for service by advertisement and you have confirmed on several occasions you do not have the address of the landlord . We have however advised you previously that if you do not have the address of your former landlord you require to make an application for service by advertisement and will require to show what steps you have taken to locate the respondent by providing a trace report from a sheriff officer or tracing agent. Without this evidence we cannot proceed with the service by advertisement. As you raised this application in April this year and we have asked for evidence to support the application for service by advertisement on several occasions we now require this to be produced within a further 21 days or your application will be rejected. Please reply to this office with the necessary information by 10 October 2023. If we do not hear from you within this time, the President may decide to reject the application.”
11. On 17 October 2023 the applicant wrote: “As I have earlier names him in the application and previous mail I have sent, his name is John Lord Burns. As earlier communicated, we were always told by the agent that the landlord was abroad and we never got to meet him or get any of their addresses. I’m not aware of the steps to get a trace report from a sheriff or tracing agent as I’m an international student.”

B DECISION

1. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule 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."

2. **After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C REASONS FOR DECISION

1. The Application is made under Rule 111 of the Procedural Rules. The rule requires:
"111. Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—
(a) state—
(i) the name and address of the person;

(ii)the name and address of any other party; and
(iii)the reason for making the application;”

2. The applicant despite extensive correspondence from the Tribunal still has not provided either the address of the Respondent or a valid and competent application for service by advertisement as set out in rule 6A of the Procedure Rules. She has not produced a trace report and has not submitted a form stating the name of the landlord. The application to this date remains thus incomplete and does not fulfill the requirement of rule 111 (a) (ii). The applicant had been given every opportunity to provide this.
3. Even taking into account the obligation of the Tribunal in terms of the overriding objective stated in rule 2, the Tribunal cannot provide legal advice to parties and cannot complete forms or applications on their behalf. It is ultimately the responsibility of an applicant to ensure that all necessary information required for a valid application is provided. In this case this is still not the case. The applicant was repeatedly advised what was required and did not provide this. That she is an international student does not change the requirements for lodging a valid application.
4. It would not be appropriate for the Tribunal to accept an application that is incomplete. The application is thus rejected.

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.

P. Hennig McFatridge

Petra Hennig McFatridge

Legal Member

8 November 2023