



**DECISION AND STATEMENT OF REASONS OF JAN A TODD LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

Under Rules 5 and 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/23/0699

Parties

Trustees for MRS FE Ralph & Others (Applicant)

Miss Bryony Marie Hawthorne (Respondent)

Lowrie Property LTD (Applicant's Representative)

Eastersyde, St Boswells, Melrose, TD6 0RL (House

BACKGROUND

1. On 6th March 2023 the Applicant lodged an application for payment of rent arrears from the Respondent in respect of their tenancy of the property at Eastersyde, St Boswells Melrose TD6 0RL ('the property'). The application was made in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant was seeking the sum of £7000 and raised an eviction action at the same time.

2. The Tribunal administration on the instructions of a legal member requested further information from the Applicants on 13th April 2023 as follows:

“I refer to your recent applications which have been referred to the Chamber President for consideration. Before a decision can be made on how to proceed, we need you to provide us with the following:

- 1. Please provide your mandate from the applicants authorising you to act on their behalf in this matter. .*
- 2. The notice to leave is dated 9 February 2023 but it was not served until 16 February 2023. The sheriff officer’s execution refers to a notice to leave dated 16 February 2023. Please clarify this. Please also provide your submission regarding the validity of the notice period bearing in mind the provisions of s62 of the Private Housing (Tenancies)(Scotland) Act 2016.*
- 3. Please provide any evidence of compliance with the pre- action requirements.*
- 4. The Cost of Living (Tenant Protection)(Scotland) Act 2022 applies. We enclose an explanatory letter in this connection.*
- 5. Please provide a rent statement detailing how the arrears of £6275 accrued. The statement provided has a cared forward balance of £3900.*
- 6. The registered landlord is Richard Grieve. Please provide evidence of how Mr Grieve is connected to the applicant.*
- 7. Please provide a copy of the tenancy agreement.*

Please reply to this office with the necessary information by 27 April 2023. If we do not hear from you within this time, the President may decide to reject the application”

3. The Applicant’s representative responded on 2nd May and enclosed a copy of the tenancy agreement but did not provide any further response.

4. The Tribunal wrote again by e-mail on 31st May 2023 seeking the following information:- *“A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:*

- 1. Please provide evidence of the role of Mr Richard Grieve as Trustee (for example a copy of the Trust Deed).*
- 2. Please explain why the landlord registration is in the name of Mr Grieve rather than in the name of the Trust, which is named as the landlord.*
- 3. Please provide evidence of the ownership of the property by the Trust named as applicant in the application.*

Please reply to this office with the necessary information by 14 June 2023. If we do not hear from you within this time, the President may decide to reject the

application”

5. The Applicant’s representative responded on 2nd June advising she wished to withdraw the eviction application but wished to proceed with this civil case and asked what further information was required. The Tribunal responded on 12th June by email asking for confirmation of the case number for the eviction action to process the request and also stating in respect of this case *“The information required for the civil proceedings case was issued to yourself via email 31st May 2023. I have reattached this email for your reference”*
6. No response was received from the Applicant and a further request was sent on 14th July stating *“Your application has been further reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters It is noted that you have failed to respond to our requests dated 31 May 2023 and 12 June 2023 seeking further information regarding your application Please respond to this letter within the next two weeks failing which the tribunal is likely to have no option but to reject the application on the basis of your failure to provide the necessary information requested by the tribunal. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 Please reply to this office with the necessary information by 28 July 2023”*.
7. On 20th July the Applicant’s agent again asked for another copy of the further information request and this was sent to them on 26th July 2023 by email.
8. On 28th July 2023 the Applicant’s representative Ms Grierson asked for further time to respond due to staff shortages and sickness. A further 14 days was granted. On 18th September a further reminder was sent.
9. No other correspondence has been received from the Applicant in response to the original request for information sent on 31st May 2023 nor in response to the reminders sent.

DECISION

10. I considered the application in terms of Rule 5 and Rule 8 of the Procedural Rules.
11. Rule 5 provides:-
“Requirements for making an application:

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 to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.”

12. Rule 8 provides:

“8. Rejection of application

(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.”

13. 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.
14. 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.

J Todd

Jan A Todd
Legal Member
19th October 2023