



**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/23/3131

Parties

Mr Stephen Anderson (Applicant)

Miss Alison Hamilton (Respondent)

K Property (Applicant's Representative)

53 Melrose RD, Greenfaulds, Cumbernauld, G67 4AZ (House)

1. On 7.9.23 the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) received an Application for what appeared to be payment of rent arrears under rule 91 of the Procedural Rules from the Applicant's representative. The application only contained a copy of what appears to be an assured tenancy under

the Housing (Scotland) Act 1988 commencing on 21.10.13 and a statement of account.

2. The FTT wrote to the Applicant's representative on 22.9.23 in the following terms:
"1. The application appears to have been made under an incorrect rule. Please confirm if it ought to have been made under Rule 70 and amend the application form accordingly. 2. Presumably you are seeking an order for payment. Please remove references to a court order for wage arrestment from the application form as that is not within the jurisdiction of the Tribunal. 3. Please provide a rent statement that shows rent due, rent paid and a running total of rent arrears. 4. Please provide a mandate from the Applicant authorising you to make the application on their behalf." No reply was received.
3. The FTT wrote again on 20.10.23 stating: "Before a decision can be made, we need you to provide us with the following: We refer to our request of further information sent on 22nd September a copy of which we enclose and note we have not received any response. Please reply to this office with the necessary information by 3 November 2023. If we do not hear from you within this time, the President may decide to reject the application."
4. No answer was received and no further documentation submitted. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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.

REASONS FOR DECISION

7. The application was made by a person who did not provide authorisation from the applicant. The application was not made under the correct rule for an application for rent arrears arising from an assured tenancy under the Housing (Scotland) Act 1988. The correct rule for such an application would be rule 70. The application did not state a specific amount for an order being sought and did not specify an applicable type of order the FTT can make. It requested an earnings arrestment and "arrears to be cleared in a timely manner". The FTT had written to the Applicant's representative on 2 occasions requesting information and had not received a reply to any correspondence. It is clear that the Applicant is no longer engaging with the application process. The Applicant's representative had been advised that the application may be rejected if no reply is received.
8. As the Applicant has disengaged from the process and not replied to repeated requests from the FTT for further information it would not be appropriate to accept an application which clearly is no longer insisted upon.
9. The application it is therefore rejected.
10. Obviously this does not prevent the applicant from making an application for payment

of arrears under the correct rule and with the necessary information should they so wish.

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.

Petra Hennig McFatridge

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Legal Member

28 November 2023