



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

39 Kirkton Gate, East Kilbride, G74 1NF

Case Reference: FTS/HPC/CV/23/4249

MICHELLE DAWSON ("the Applicant")

HEATHER GARDNER ("the Respondent")

1. An application dated 29th November 2023 was received from the applicant under Rule 111 of the Procedural Rules being an application for civil proceedings in relation to a private residential tenancy.
2. By a series of e-mails to the Applicant dated 5th, 7th, 19th and 29th December 2023, and 9th January 2024, the Tribunal requested further information from the applicant in terms of Rule 20. The Tribunal requested the applicant to provide further information concerning the application by return. On each occasion, the applicant has failed to provide the information requested.
3. In this application the applicant seeks payment from the respondent of a total sum

of £9,197.63. Little detail is provided to explain the sum sought. It is said in the papers provided with the application form to comprise £4,692.63 to “recoup costs for rent monies paid, this includes deposit taken”, £1,755.00 for “storage costs due to the property not being able to be utilized”, £1,500.00 for “loss of earning in December 2023, and £1,250.00 for “removal costs”.

4. The application form in section 1(e) lists the applicant’s contact address as “use email”. The applicant does not provide her address anywhere else in the application form or application papers.
5. The application form in section 5(b) states the reasons for making the application as “recoup costs incurred due to unlawful tenancy issued in breach of the Housing Act and the Repairing Standard and dishonesty of the agents and property owner in relation to the condition of the property and failure to check the property was in a habitable condition”.
6. The applicant provided in the application papers an *ex facie* valid model private residential tenancy agreement between her as tenant and the respondent as landlord. The applicant does not explain on what basis she alleges that the tenancy is “unlawful”.
7. The tenancy start date in the lease agreement was 30 September 2022. The applicant provided in the application papers a condition inventory report on the property dated 29/09/2022, which appears to show the property in generally good condition with photographs provided. The applicant does not explain in what respect she alleges that the respondent and her agents were dishonest in relation to the condition of the property nor concerning any failure to check the property was in a habitable condition. The applicant does not explain in what respect she alleges the property was not in a habitable condition.
8. The application form in section 5(c) states the details of the order being sought from the Tribunal. Several parts of the print have been overwritten making it difficult to read, but it appears to state “£9,197.63 these costs relate to deposit and rental money obtained on the unlawful tenancy, loss of earnings dealing with

agent incompetence, utilities, moving costs, legal fees and application costs Further compensation tbc by tribunal for mental and emotional distress, inconvenience caused and issuing of unlawful tenancy”.

9. The applicant does not explain the legal basis upon which she asserts that she is entitled to repayment of the deposit and rental money, why she asserts that the tenancy is “unlawful”, nor the legal basis said to entitle her to compensation for loss of earnings, utilities, moving costs, legal fees, application costs, and for mental and emotional distress, inconvenience and issuing of unlawful tenancy. The applicant does not explain in what respect she alleges the respondent’s agent has been incompetent, nor what mental and emotional distress and inconvenience she has suffered.
10. The application form in section 6 states the required documents included in the application are “copy of unlawful tenancy showing amount paid, invoices (redacted to avoid harassment and these are productions in another legal matter, banking information, medical data”.
11. There appears to be no medical data included with the application papers. Various bank statements are provided. These are accompanied by a note from the applicant which states “this data shows my claim for the £1,500 I lost in earnings having to deal with the misconduct and failures of the property due to proper checks not having been done Data has been redacted to prevent the claimant making unauthorized contact with my employer and causing harassment and my employer asked for the data to be removed. This is also logged as productions in the upper courts therefore I am instructed to protect potential witnesses **Total claim is for £1500 loss of earnings**”. Appended to this note is a document addressed “To whom it may concern” which is undated. Its content suggests it may have been written by the applicant’s employer, but the name of the author and of the employer have been redacted so it is not possible to identify those parties. An apparent payslip is also appended to the note showing a “salary adjustment” of “-£1,500.00” and which names the employee as being the Applicant, but most other details have been redacted except for the date which is stated as 22/12/2022.

12. The applicant does not provide any explanation as to why “the claimant” (she presumably means the respondent) might attempt to contact her employer, why any such attempt would be “unauthorized” and should be prevented, nor the basis for her assertion that there is a risk that the respondent might harass her employer.
13. In its e-mail of the 5th December 2023, the Tribunal noted that the applicant was involved in several other cases before the Tribunal and requested that she resend the papers in the new application, which she thereafter did on 6th December 2023.
14. The Tribunal’s e-mail to the applicant of 7th December 2023 was written by a legal convener sifting the application and was in the following terms:

“Dear Miss Dawson

**Application to the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 39
Kirkton Gate, East Kilbride, G74 1NF**

I refer to your recent application which has been referred to the Chamber President for consideration.

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

1. Failure to comply with the statutory repairing standard in the 2006 Act does not give rise to a right to compensation. The only remedy available to tenants is to make an application for a Repairing Standard Enforcement order. If you wish to do this, information about the process and the relevant application form can be found on the Tribunal website.
2. If you wish to proceed with this application on the grounds that the landlord has failed to fulfil their contractual obligations, please provide an amended form which confirms this. Please also note that complaints against letting agents must be made by separate application and in terms of Rule 95. Again, information can be found on the website.

3. Please provide an address. This is required in terms of the Rules and a c/o address cannot be used. The Tribunal can correspond by email but a residential address must be provided.

4. Please clarify why the tenancy is unlawful. You have submitted a model PRT with the application.

5. Please provide details of the repair issues at the property, with evidence such as photographs. Please also provide evidence that these were reported to the landlord or letting agent.

6. For the claim for loss of earnings, please specify the section of the tenancy agreement which makes provision for this. Please also note that un-redacted vouchers for this are required as the documents lodged have no evidential value.

7. For the claim for storage and removal costs please provide vouchers or invoices from the storage company. Please also provide details of the relevant part of the tenancy agreement which makes provision for this part of the claim.

Please reply to this office with the necessary information by **21 December 2023**. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.

Kind Regards,

Jodie Weir

Deputy Team Leader - Private Rented Sector

First-tier Tribunal for Scotland (Housing and Property Chamber)

Glasgow Tribunals Centre

20 York Street

Glasgow

G2 8GT

Tel: 0141 302 5900

Please note that Tribunal staff are not qualified or permitted to provide legal advice."

15. The applicant replied on 7th December 2023 by e-mail in the following terms:

"Hi

Can you confirm the legal expertise please of who has asked for all this as someone competent in the law wouldn't ask for it make such statements.

What is the legal qualifications of the person dealing with this matter please

Also I did provide all this data and you had no competent staff to be able to match up the data so you've already had it.

What on earth is going on with this service? Those list of questions and request are really unacceptable when I already provided the data

If you require further forms to be provided then provide me a copy of them as your website is not user friendly and forms cannot be found.

Use the data provided and if anything is outstanding then you provide me a copy of what you require completed, don't send people to a website full of data that is all over the place and not usable.

Also. Require you to quote the law when your making reference to something , for example point 1, is that law or someone's opinion or views?

Point 2, what other application are you referring to, where on the website are you referring I look at? Provide links

Point 3 your not corresponding my mail so no address is required

Point 4, I referred you to the other application on the same email , that gave you all the information you need

Point 5 again this was all provided and you didn't apply it to the case

Point 6 im not required to provide such information, my role is to make the claim, your job is to apply the law to it, and it's your job to carry out the administrative work on my claim not me, there is no requirement for there to be such a point in a tenancy as a person can legally claim losses and expenses occurred so that request is wrong redactions are also permitted part of the process so that's a wrong statement as well

7 again there is no requirement for this to be stated in a tenancy as it's an expenses occurred which legally can be recouped.

What is clear to see here is you don't have someone competent in the law to deal with such a claim, you don't know my rights or the civil law that allows recouping of costs and expenses.

This is not good enough nor acceptable.

Who dealt with that and what are there legal qualifications.

Michelle".

16. The contents of the applicant's response comprise a series of questions and apparent criticisms of the way her application was being dealt with. She did not provide any of the further information requested by the Tribunal.
17. The Tribunal's e-mail to the applicant of 19th December 2023 was again written by a legal convener sifting the application and was in the following terms:

"Dear Miss Dawson

**Application to the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 39
Kirkton Gate, East Kilbride, G74 1NF**

I refer to your recent application which has been referred to the Chamber President for consideration.

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

A Legal Member of the Tribunal with delegated powers of the President has considered your response.

Rule 111 of the Tribunal Procedure Rules requires an Applicant to provide their address, evidence to support the application and a copy of any relevant documents.

The application cannot be accepted unless you comply with this Rule.

Please provide

- 1. Your address.**
- 2. Un-redacted vouchers for losses.**
- 3. Evidence of the condition of the property.**

It is noted that you intend to proceed on the basis that the Landlord has not complied with the repairing standard. You will require to establish that this provides a legal basis for compensation. You may wish to take legal advice before you respond.

Please reply to this office with the necessary information by 2 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.

Kind Regards,

Jodie Weir

Deputy Team Leader - Private Rented Sector

First-tier Tribunal for Scotland (Housing and Property Chamber)

Glasgow Tribunals Centre

20 York Street

Glasgow

G2 8GT

Tel: 0141 302 5900

Please note that Tribunal staff are not qualified or permitted to provide legal advice."

18. The applicant replied on 7th December 2023 by e-mail in the following terms:

"Hi

This is the same request that I've already responded to previously.

No address is required as you have an email address as point of contact, if you require an address then use the property address, 39 Kirkton Gate.

No unreacted data will be provided in line with Article 8 of the Human Rights Act, people have the right to privacy and that included a correspondence. If the service has an issue with this then you would be required to submit an application to the court of session for a Judge to review. Any time personal data is in place, Article 8 and a persons right to privacy is invoked and this service must comply with it, should it not be able to respect the Law and uphold it then you would have to apply to the higher courts who have the powers to deal with the Human Rights Act. So this service either respects Article 8 or it applies to the higher court for a hearing in relation to the data that has been redacted, that's your options, your option is not to keep writing to me with incorrect statements.

I would also point out that your own rules allow for redactions of data and in line with data laws, and privacy laws that has been applied.

Your only requiem is to see values, you don't require personal details or data to proceed my application.

You have been provided the pictures of the condition of the property, 3 times now that data has been sent to you so you already have it. Why have you asked for this again when I have sent this multiple times.

My application is raised in relation to the law of at the time of the issuing of the

property it did not meet the tolerable condition to live in as set out by the law and was not in a legal position to take money against it.

I now want this raised as a complaint as you have already been provided the data multiple times now and have failed to proceed my case and all your doing is sending me emails asking for information you already have.

It's also clear to see from your comments the person dealing with this doesn't understand data laws and your not applying the law correctly to my case, your not even applying your own rules correctly.

Get your administration in order please and stop messing my case up. You've had everything, more than once and you've failed to proceed my case.

So now raise that as a formal complaint as I can't keep repeating myself and sending you the same things and I cannot accept this lack of knowledge in the law by staff to impact my application.

Either proceed my case or refer it to the Court of Session - I have the right to Justice within the law and I have the right to a fair hearing under Article 6 of the Human Rights Act and at present, this service is providing neither, so I want my case dealt with by a court that can apply the law correctly

Michelle “.

19. The contents of the applicant's response comprise a series of assertions which she does not explain the legal bases for, and intimation of a formal complaint to the Tribunal regarding how her application was being processed. Again, she did not provide any of the further information requested by the Tribunal.
20. The Tribunal responded by e-mail to the applicant on 29th December 2023, which was again written by a legal convener sifting the application, and was in the following terms:

“Dear Miss Dawson

Application to the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 39
Kirkton Gate, East Kilbride, G74 1NF

Your application and email of 19 December 2023 have been referred to a legal member with delegated powers of the Chamber President. The legal member refers you to the terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 which provide as follows:

Application for civil proceedings in relation to a private residential tenancy

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;

(b)be accompanied by—

(i)**evidence to support the application;** and

(ii)**a copy of any relevant document;** and

(c)be signed and dated by the person.

The legal member has highlighted relevant sections for you.

In respect of the request for an address this is a mandatory requirement under Rule 111(a) (i) highlighted above. You state that the Property address may be used. Your application will be updated to include that address.

You have been asked to provide evidence in support of your application. This is required under Rule 111 (b) (i) highlighted above. Whilst you have made various claims in the context of this application you have not provided evidence in support

of these. It is not acceptable to refer to other applications you have made to the Tribunal. You must supply the evidence in this application to support the claims you make and justify the amounts of compensation you seek. Failure to do so may result in the rejection of your application.

The Tribunal may accept redacted documents upon application by a Party setting out why personal information should be redacted. If you wish to do so then you will need to make such application.

Please provide the information requested within 14 days failing which the application may be rejected.

Please reply to this office with the necessary information by 12 January 2023. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.

Yours sincerely

Rebecca Ryan

Casework Officer

0141 302 5900

HPCAdmin@scotcourtsribunals.gov.uk".

21. The applicant replied on 29th December 2023 by e-mail in the following terms:

"I would like this raised as a formal complaint as I've provided these responses multiple times so there's clearly problems with your admin processes.

Also your incorrect asking people to evidence multiple things, when there is a law in place and it relates to a persons legal right, a person does not have to justify that right, so in relation to redacted data, this is covered by Privacy laws and a persons legal right to confidentiality including personal data and correspondence, therefore there is no

requirement for me to have to justify redactions as the law permits it and your service must comply with the law.

If the responses I've been getting from this service highlights serious administration issues but also lack of knowledge of the law which means nobody there is in a legal position to progress any application and apply the law correctly.

So have this matter raised as a formal complaint as I've now had the same email requests 4 times and all of them have been responded to and data provided yet it's still not being acknowledged or processed.

This level of service is not acceptable so raise a formal complaint against the president of this service as they are clearly failing in their legal duty to provide a fit for purpose service that is compliant with the law.

All these failings in administration or applying the law correctly are serious because your in breach of Article 3 of the Human Rights Act and a persons legal right to a fair and lawful hearing, that includes the process being fit for purpose which this service has displayed it is not.

Thanks

Michelle".

22. Again, despite her assertions in the e-mail to the contrary, the applicant did not provide any of the further information requested by the Tribunal. She intimated a formal complaint to the Tribunal.
23. The applicant sent two further e-mails to the Tribunal. The first of those on 4th January 2024 again responded to the Tribunal's e-mail of 29th December 2023 and simply stated "Why am I receiving this when I already have provided the information 4 times now?". The second, sent on the same day as the first, which responded to the Tribunal's acknowledgement of receipt of her earlier e-mail of 29th December 2023, stated as follows:

"Hi

Thank you for confirming.

Please note my application must be dealt with by someone who has practiced in law within the last 18 months, I cannot accept any member who does not have up to date legal knowledge to proceed my application.

If you have no suitably qualified staff who have worked within the law within the last 18 months then this service would not be in a position to deal with my case and you would be required to refer it to the Court of session to be heard.

Also I have instructed removal of my personal data from any application published online after discussions with the information commissioner and therefore you must ensure my data is not disclosed online at any time, and before you quote the law to me, I'm fully aware of it and that doesn't remove my right to privacy under Article 8.

Thank you for confirming today, appreciated.

Regards

Michelle".

24. It is unclear what the significance or basis of the applicant's assertion that her application must be dealt with by someone who has practiced in law within the last 18 months is, nor her reference to referral to the Court of Session.
25. The Tribunal's final e-mail of 9th January 2024 requesting further information from the applicant, and again written by a legal convener, is in the following terms:

"Dear Miss Dawson

**Application to the First-tier Tribunal for Scotland (Housing and Property Chamber)
Under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 39
Kirkton Gate, East Kilbride, G74 1NF**

I refer to your recent application which has been referred to the Chamber President for consideration.

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

Thank you for your recent response which has been passed to a legal member with delegated authority of the Tribunal President who has advised that without an address for you as an applicant (which you have not yet given) or any submissions why your address should be redacted and not provided in this application the Tribunal has no discretion and cannot accept your application. You have been advised previously of our rules regarding this.

Please now let us have your address or your submissions and your submissions on why the address should not be disclosed which will then be considered by a legal member on behalf of the President.

Please provide this within 7 days and please note that failure to answer this final request and provide the information requested is likely to result in your application being rejected.

Please reply to this office with the necessary information by 16 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.

Kind Regards,

Jodie Weir

Deputy Team Leader - Private Rented Sector

First-tier Tribunal for Scotland (Housing and Property Chamber)

Glasgow Tribunals Centre

20 York Street Glasgow G2 8GT

Tel: 0141 302 5900

Please note that Tribunal staff are not qualified or permitted to provide legal advice."

26. The applicant response to the Tribunal's e-mail of 9th January 2024 was in short

compass and stated the following:

"I'm registered homeless with the Council, therefore there is no fixed address to provide.

Therefore put no fixed address.

If I receive yet another email from you asking for information you've already received then I will take legal action.

Michelle".

DECISION

27. 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."

28. After consideration of the application, the attachments and correspondence, 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 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

29. The Tribunal has made repeated requests for 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.
30. The applicant has repeatedly failed to respond to the Tribunal's requests for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. That failure to provide the requested information appears to be a deliberate act on her part, and appears to proceed on a misapprehension that she does not require to explain or specify the legal basis of her claim nor to produce any evidence to support it.
31. Rule 5 of the Procedural Rules lays down the requirements for making an application and provides as follows:

“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 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.

(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.”.

32. In terms of Rule 5(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. The mandatory requirements for lodgement in this application are set out in Rule 111 of the Procedural Rules which provides:

“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;
- (b) be accompanied by—
 - (i) evidence to support the application; and
 - (ii) a copy of any relevant document; and
- (c) be signed and dated by the person.”.

33. The mandatory requirements of Rule 111 include the application stating the address of the applicant, the reason for making the application, and the applicant providing evidence to support the application. The applicant has failed to provide these items, and accordingly the mandatory requirements for lodgement of this application have not been met.

34. That being so, Rule 5(3) provides that if the 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. Various legal conveners acting under the delegated powers of the Chamber President have made five requests of the applicant to provide the further documents required to meet the mandatory requirements for lodgement. The applicant is unwilling or unable to provide those.

35. Rule 5(4) provides that the application is not accepted where the outstanding documents requested under Rule 5(3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate. The legal conveners acted under the delegated powers of the Chamber President in this regard, as do I. The outstanding documents requested have not been received within a reasonable period from the date of request. The applicant has been given several opportunities to provide that information, and is unwilling or unable to provide it.

36. I consider that the applicant’s failure to respond to the Tribunal’s requests 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.

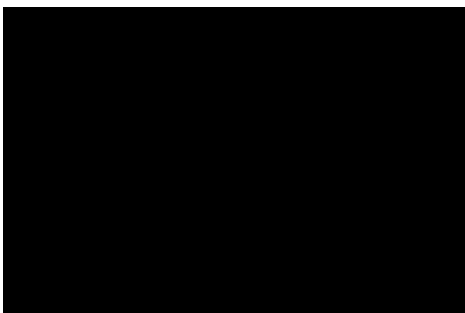
37. Accordingly, for this reason, the application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.



Legal Member
11th January 2024