



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/RE/24/2493

Re: 107 Willow Drive, Johnstone, Renfrewshire, PA5 0BZ ("the Property")

Parties:

Mijak Limited ("the Applicant")

Penny Lane Homes ("the Applicant's Representative")

Megam MacNab ("the Respondent")

Tribunal Member: Martin J. McAllister (Legal Member)

The Tribunal rejects the application by the applicant received by it on 29 May 2024 which is an application under Section 28 A (1) of the Housing (Scotland) Act 2006 (“the 2006 Act”) and Rule 55 of the Rules.

Background

1. The Applicant's Representative submitted an application for assistance with obtaining access to the Property.
2. On 12 June 2024, the Applicant's Representative was asked to provide evidence that appropriate notification had been given to the Respondent with regard to the Applicant's request to exercise the right of access.
3. The Applicant's Representative was asked to address the fact that the copy of the letter which had been sent to the Respondent sought access on 29 May 2024 and had been delivered on 28 May 2024. The relevant private residential

tenancy agreement stated that 48 hours' notice of the Applicant's wish to exercise the right of access required to be given to the Respondent

4. The request for information was in terms of Rule 5 (3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
5. The Applicant's Representative responded. It stated that the notification was posted in time but that it had no control over the postal service.

Decision

6. **After consideration of the application, the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 55 of the Rules and Section 28 A (4) of the 2006 Act.**

Reasons

7. The Legal Member considered the application in terms of Rule 5 and Rule 55 of the Chamber Procedural Rules. Rule 5 provides: - (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 lodgment 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 requirement manner for lodgment. “

8. Section 4 of the relevant private residential tenancy agreement, signed by the parties, states that any notification by one party to the other should be given by email.
9. The Applicant chose recorded delivery mail as the method to deliver notification that it was seeking access to the Property.
10. Section 20 of the private residential tenancy agreement states that the Respondent should be given 48 hours' notice of the Applicant's intention to exercise its right of access. The Respondent was not given 48 hours' notice and the application is therefore premature.

Martin McAllister

Martin J. McAllister, Legal Member, 10 July 2024