



**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/24/0539

**Parties**

**Katarzyna Wit-Biniak, Mr Mariusz Biniak (Applicant)**

**Mr David Cavanagh (Respondent)**

**PROTECT CHILDREN'S RIGHTS & SAVE THE CHIL (Applicant's Representative)**

**Craufurdland Road 10K, Kilmarnock, KA3 2HT (House)**

1. On 1.2.24 the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) received an Application for a payment order under Rule 70 of the Procedural Rules . The application initially requested issuing of a tenancy agreement and a claim for £10,950 reflecting 19 months of the monthly rental and asked for warrants to be issued.
2. The FTT wrote for the first time on 6.3.24 to try to clarify what exactly the application was about. The FTT stated: 1. The Tribunal is not at all clear what your application is for. The Tribunal is not the High Court and cannot grant “warrants”. Your application is under Rule 70 of the Tribunal Rules of Procedure which is an application for a civil

remedy arising from an assured tenancy. Please explain clearly what remedy you seek and the legal basis for it. 2. The Property address has been stated with several different spellings. Please confirm the correct address. 3. The Respondent's address has been submitted with different spellings. Please confirm the correct address. 4. The application has been signed by 2 Applicants but only one Applicant is detailed in the application form. Please confirm the position. 5. Part of your application appears to be against the letting agents. Please confirm what remedy you seek against the letting agents and why you consider the Tribunal has jurisdiction under Rule 70 to deal with it.

3. On 20.3.24 the Applicant clarified the spelling of the property address and the Respondent's address. He indicated that there would be separate proceedings against the letting agent without further clarifying that statement. He stated as the legal remedy sought: "is to obtain Tenancy Agreement from Landlord. As of today I have three agreements."
4. The Applicant asked for further time to reply and for a solicitor to be appointed for him by the FTT. On 26.3.24 the FTT advised him that the FTT cannot appoint a solicitor and that further time for a reply was extended to 5.4.24.
5. On 5.4.24 the Applicant asked for various orders, the document is referred to for its terms.
6. This was accompanied by a copy page of a book in a foreign language without translation. On 12.4.24 the Applicant wrote with a further document to the FTT saying they should forward the documents to a translator as he was using automatic translation. In that document he stated that he would forward encrypted sensitive data to the FTT and listed the data he was to forward.
7. On 1.5.24 the FTT wrote to the Applicant in the following terms: 1. By letter dated 6 March 2024 the Tribunal sought further information set out in points 1 to 5. You have provided a response to points 2 and 3. 2. You have not provided an adequate response to point 1 in the Tribunal's letter dated 6 March 2024. The Tribunal is not at all clear what the application is for. In the form G you state you seek orders for compensation. In your email dated 19 March 2024 you say the remedy you seek is to obtain a tenancy agreement. Your email dated 11 April 2024 seems to seek an order for compensation and refers to events in June and October 2024; September to

November 2020 and December 2016 to April 2024. Please clarify the order sought and the legal basis for seeking the order. 3. You have not provided an adequate response to point 4 in the Tribunal's letter dated 6 March 2024. Please clarify who is to be the Applicant and who, if anyone, is to be the Applicant's Representative. 4. You have not provided an adequate response to point 5 in the Tribunal's letter dated 6 March 2024. The basis for making an application against the letting agent is unclear. Please clarify the basis for this or whether this part of the application is withdrawn. 5. Your emails suggest that you expect the Tribunal to translate documents submitted in a language other than English. Note that the Tribunal has no facility to do this. Applications require to be submitted in English.

8. After some correspondence in which the Applicant indicated he would send further replies shortly and various attempts of the FTT to contact the Applicant, latterly by post, the FTT wrote on 29.5.24 reminding the Applicant to provide an email address and to answer the outstanding questions from the original request for further information, namely: 1. Please explain clearly what remedy you seek and the legal basis for it. 2. The application has been signed by 2 Applicants but only 1 Applicant is named in the application form. Please confirm the correct position. 3. Part of your application appears to be against the letting agents. Please confirm what remedy you seek against the letting agents and why you consider the Tribunal has jurisdiction under Rule 70 to deal with it.
9. On 3.6.24 the Applicant provided some medical information and asked for " a stay of proceedings until 15.8.24."
10. On the FTT advised him that there is no such provision in the Rules of Procedure. The FTT asked him to either withdraw the application and to re-raise it once he was able to deal with the matter or to provide the requested information by 19.7.24.
11. On 2.7.24 the Applicant wrote with further medical evidence and stated: "I am fully aware that I have made three applications for justice to be done, however, after many consultations with my GP, and a psychologist, it is neither mentally nor physically possible for me to attend the proceedings (I can walk up to 20 metres). At the moment my life for my three children is the most important thing, I now have to fight for myself and I just need a respite." He gave no indication when he would address the outstanding matters or when he would provide any evidence to accompany the

application to evidence the matters he set out over the course of the application process to date.

12. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

13. 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."*

14. 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. Rule 70 (b) (i) requires evidence to support the application. There is no evidence regarding the claims for money such as evidence of damage to items, vouching for same etc. The application at this stage remains unclear and incomplete. As set out in the repeated requests for further information by the FTT, it is not clear from the documentation lodged to date what type of application the Applicant actually wishes to make and what the remedy is that he wishes to achieve and whether the application is made by one or two Applicants. There are requests for repairs and warrants etc, which are not matters that can be dealt with under rule 70. A tenancy agreement cannot be requested under rule 70. Insofar as there are requests for payment of money, these have not been supported by any evidence. The Applicant clearly does not intend to engage with the application process further at this stage. Thus the application is rejected.

15. It is important to state that the Applicant can make a fresh application, which meets the application requirements as set out in rule 70, once he is able to do so and to provide the necessary evidence to accompany a civil claim.

### **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

Legal Member

24 July 2024