



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/CV/23/3664

Parties

Karen Busher (Applicant)
Hannah Dolan (Respondent)

2/R, 323 Clepington Road, Dundee, DD3 8BB (House)

1. By application received by the Tribunal on 13 October 2023 the Applicant sought a payment order against the Respondent in respect of outstanding rent arrears. The application was made under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 16 November 2023 the Tribunal wrote to the Applicant in the following terms:-

“The tribunal notes that in your application that you do not appear to have a current residential address for the respondent /former tenant.

If you cannot provide a current residential address for the respondent it will not be possible for the tribunal to serve papers on the respondent in respect of any hearing relating to this application. In those circumstances you require to instruct sheriff officers to attempt to trace the former tenant and, if you are able to trace them , to provide us with the up-to-date address.

If sheriff officers cannot trace the respondent then they will provide you with a report confirming same and you can then apply to the tribunal to have notice of the application served on the respondent by means of advertisement on the tribunal website.

Can you please confirm that you have instructed sheriff officers to try to trace the former tenants and let us have their report as soon as it becomes available.

Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination.”

3. The Applicant's representative contacted the Tribunal by email on 1 December 2023. They asked for additional time to provide a response, stating that they were trying to obtain a forwarding address for the Respondent. The Applicant's representative sent an update on 12 December 2023 to advise that the management of the house would transfer to Dymock Properties Ltd, who were copied into the email.

4. On 16 January 2024 the Tribunal wrote to the Applicant directly in the following terms:-

"The Tribunal has received information that your previous agents are no longer acting on your behalf. Please send a new mandate for the new agent to the Tribunal and provide their details or confirm that you are now acting yourself in taking forward the application. In any event, 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:

Unless you provide the new address of the Respondent or an application for service by advertisement together with a negative trace report from Sheriff Officers or a tracing agent within 21 days the application will likely be rejected as incomplete. Should you already have instructed a trace report and been given a date by which the information will be available please provide a copy of this if you require a further extension of time. You have already been asked for the Respondent's address information on two previous occasions. The Tribunal cannot keep cases open indefinitely."

5. The Applicant did not respond. The Tribunal wrote again on 22 March 2024 in the following terms:-

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

1. Details of your new letting agent, if one has been appointed, and confirmation that they are to deal with this matter on your behalf.

2. An address for the Respondent or an application for service by advertisement with a trace report from a Sheriff Officer. The application cannot be accepted if you fail to do this."

6. No response was received from the Applicant. The Tribunal wrote again to her on the 1st May 2024 and 7 June 2024. The Applicant was advised that her application would likely be rejected if the information requested was not provided. There was no further response from the Applicant, nor her representative.

7. Rule 8(1)(c) of the Rules allows an application to be rejected by the Chamber President if "they have good reason to believe that it would not be appropriate to accept the application". The Applicant has failed to provide correspondence details for the Respondent, or evidence to support an application for service by advertisement on the Tribunal's website. As a result the Tribunal would be

unable to effect service of the application paperwork on the Respondent. The application is therefore incomplete, and on that basis it would not be appropriate to accept the application in its current form. The Applicant has been asked for the information on numerous occasions and has been made aware of the consequence of her failure to respond. In the absence of any further information from the Applicant the application must be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Ruth O'Hare, Legal Member
30 July 2024