



DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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 Procedure Rules")

Case Reference: FTS/HPC/PY/24/4929

Iman Al-Saffer ("the Debtor")

Miles Boylan ("the Creditor")

1. On 6 September 2024, the Applicant submitted an application for a Time to Pay Order in terms of Rule 41H of the Procedure Rules and Section 5 of the Debtors (Scotland) Act 1987). This was stated to be in respect of a payment order granted against the Debtor in respect of case reference FTS/HPC/PR/23/3617 in the sum of £6,798. The Debtor was offering to pay by instalments of £300. Some supporting documentation was lodged in respect of the application and the debtor also sought some advice from the Tribunal.
2. A request for further information was issued to the Debtor by the Tribunal on 28 October 2024 in the following terms:-

"Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President.

The Legal Member has requested the following information or documentation:

1. Please provide a copy of the charge for payment served upon you by the creditor. If this has not yet been served, please withdraw the application as a Rule 41H application cannot be made before the charge for payment has been served.

2. We are unable to provide you with advice regarding payment and the parties to the original application. You may wish to take advice from a solicitor or suitable advice agency in this regard."

The Debtor responded by email on 30 October 2024 but did not provide a copy of the Charge for Payment which had been requested. A further request was issued by the Tribunal on 31 October 2024 as follows:-

"1. Please provide a copy of the charge for payment served by sheriff officers on you on the instructions of the creditor. The posting receipt you have sent is not a charge for payment which is a specific legal document used in enforcing debt

recovery.”

A response was requested by 14 November 2024 but nothing further was received from the Debtor. Accordingly a reminder was issued by the Tribunal on 18 November 2024, requesting a response by 2 December 2024 in the following terms:-

“It appears that your application may have been premature. You cannot seek time to pay until the creditor has taken action to enforce the order. Usually, this involves a charge being served by Sheriff Officer. If you have been served with a charge please provide a copy of this as a matter of urgency. If not, you should withdraw the application and re-submit it once enforcement action has commenced.

You may wish to take legal advice before you respond.

Please respond within 14 days or your application may be rejected”.

No response was received from the Debtor within the time limit stated, nor since.

Decision

3. After detailed consideration of the application, and the above, 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.”

Reasons for Decision

4. Rule 5 of the Procedure Rules states that 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...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
5. The Debtor has not lodged an application in accordance with the Procedure Rules in that he has not provided all supporting documentation required, in particular a copy of the Charge for Payment (a pre-requisite for making an application under Section 5 of the Debtors (Scotland) Act 1987), nor responded to requests by the Tribunal for further documentation. The application is incomplete and not currently a valid application. The Debtor has been given several opportunities to clarify the position and submit the documentation required but has failed to do so.
6. The Tribunal informed the Debtor of the position on three separate occasions and on the last occasion was informed of the risk of rejection of the application in the event that no response was received.
7. The Debtor has failed to comply with Rules 5 and 41H of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.

Nicola Weir, Legal Member
4 December 2024