

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/PR/24/1254**

**Flat 2/1, 73 Dundrennan Road, Glasgow, G42 9SL ("the Property")**

**Parties:**

**Declan Cox ("Applicant")  
Stephen McFadden ("Respondent")**

**Tribunal Member: Ruth O'Hare (Legal Member)**

**Decision**

**The Tribunal rejects the application by the Applicant received by it on 4 April 2024 under Rule 8(1)(c) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules").**

**Background**

- 1 On 4 April 2024 the Tribunal received an application from Lindsays Solicitors ("the Applicant's representative") on behalf of the Applicant under Rule 69 of the Rules. The Applicant sought a payment order in the sum of £100,000 against the Respondent under sections 36 and 37 of the Housing (Scotland) Act 1988 as compensation for an unlawful eviction.
- 2 On 29 April 2024, following a review of the application by a Legal Member of the Tribunal with delegated powers from the Chamber President, the Tribunal wrote by email to the Applicant's representative requesting a current address for the Applicant and evidence regarding the calculation of damages. A response was requested by 13 May 2024. The Tribunal advised the Applicant's representative that, in the absence of a response, the application may be rejected by the Chamber President.
- 3 The Tribunal received no response. A reminder was sent to the Applicant's representative on 29 May 2024 requesting they provide the requested information by 12 June 2024. On 17 June 2024 the Tribunal received an email from the Applicant's representative confirming that they had withdrawn from acting on behalf of the Applicant in the matter. The Tribunal therefore wrote

directly to the Applicant by email on 4 July 2024 noting the withdrawal of his representative and requesting a current address together with a breakdown of the sum claimed and evidence to support this.

- 4 On 5 July 2024 the Tribunal received an email from the Applicant. He advised that he was in the process of changing agents. He requested an extension of 30 days to provide the information requested, to give his new agents the opportunity to review the file and submit a response to the Tribunal. On 9 July 2024 the Tribunal responded to the Applicant agreeing a 30 day extension for the information to be provided.
- 5 The Tribunal received nothing further from the Applicant. On 19 September 2024 the Tribunal wrote to him again by email noting the lack of response and requesting confirmation as to whether the Applicant wished to proceed with the application, in which case he would require to provide the requested information. The Tribunal asked him to respond by 3 October 2024. The Applicant was advised that his application may be rejected by the Chamber President if the Tribunal did not hear from him in advance of that deadline. The Applicant responded that same day by email apologising for the lack of response which was due to a family bereavement. He explained that he had instructed new legal representation and sought clarity on the nature of the application, noting that he had two applications pending before the Tribunal. The Tribunal responded to the Applicant on 20 September 2024 to confirm that the application in question was the application for damages for unlawful eviction under Rule 69 and attached a copy of the previous request for information.
- 6 The Tribunal heard nothing further from the Applicant. On 4 November 2024 the Tribunal wrote again to him by email noting the previous requests for information and extensions granted. The Applicant was asked to provide the information by 2 December 2024 failing which his application may be rejected.
- 7 No further response was received from the Applicant.

### **Reasons for Decision**

- 8 The Legal Member considered the application in terms of the Rules and determined 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 provide the further information requested by the Tribunal under Rule 5(3) of the Rules which is necessary to meet the required manner for lodgement for an application under Rule 69. The Applicant has been asked for the information on numerous occasions and has been given ample opportunity to provide same, with the application having been ongoing since April 2024. Accordingly the Legal Member has concluded that the application cannot be accepted at this time and must be rejected under Rule 8(1)(c).
- 9 It should be noted that this decision does not preclude the Applicant from submitting an application to the Tribunal at a future date once he is in a position

to provide the information required. However in light of the length of time this application has been ongoing, and the repeated requests for information which have gone unanswered, it would not be appropriate nor in the public interest for the current application to continue.

**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: A party 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.

# R.O'Hare

**30 December 2024**