



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

2/R 21 Scott Street, Dundee ("the property")

Case Reference: FTS/HPC/CV/20/0612

Alan Cox, 20 Cherry Tree Park, Balerno, Edinburgh ("the Applicant")

Alex McMurray, 2/R 21 Scott Street, Dundee ("the Respondent")

1. By application received on 20 February 2020 the Applicant seeks an eviction order and a payment order for unpaid rent in relation to the property. The application was submitted under Rule 70 of the Rules. A copy private residential tenancy agreement and Notice to Leave were lodged with the application.
2. On 24 February 2020 the Tribunal sent an email asking the Applicant to submit evidence regarding the rent arrears, as required by Rule 70. In response the Applicant sent an email saying he wished to "cancel" the application, as the tenant had moved out. On 26 February, 5 March and 23 April 2020 the Tribunal sent further emails to the Applicant asking him to confirm if he wished to withdraw the application. On 23 April 2020 he responded stating that he had to continue as he had been unable to visit the property to establish if the Respondent had left. On 24 April 2020 he submitted a rent statement. On 12 May and 17 July 2020, the Tribunal wrote to the Applicant to advise that a

separate application for an eviction order was required, as the application submitted was on the wrong form and under the wrong rule. He was asked to confirm if he wished to make a separate application. He was also directed to confirm if he wished to amend the application for a payment order to rule 111, as he had submitted a private residential tenancy and not an assured tenancy. He was also directed to provide information regarding the amount of the payment order he was seeking, as the application did not provide this information, and it was required. No response has been received to either letter.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules. That Rule 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. “

4. **After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5.**

Reasons for Decision

5. The Applicant submitted an application in terms of Rule 70. This rule relates to civil proceedings in relation to assured tenancies under the Housing (Scotland) Act 1988. In the application form he states that he is seeking an eviction order and a payment order, although he does not specify the sum being sought by way of a payment order. The Tribunal has written to the Applicant on two occasions advising him that he has to submit a separate application for an eviction order. He has also been directed to confirm if he wishes to amend the application which has been lodged to the correct rule, and provide information regarding the sum being sought by way of a payment order. No response has been received.
6. The application has been lodged under the wrong rule. Furthermore, the Applicant has failed to meet the mandatory requirements to allow the application to proceed under the correct rule and has failed to provide further information, having been directed to do so in a request for further information by the Tribunal in terms of Rule 5(3) of the Rules. As a result, the application cannot be accepted. 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.



Josephine Bonnar
Legal Member
31 August 2020