

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT

Under Rules 5, 8 & 70 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/19/0737

Lotus Group ("the Applicant")

Mr Marian Rusnak ("the Respondent")

Background

1. On 6 March 2019, an application was submitted by the Applicant's Representative. The application is made under Rule 70 of the Procedural Rules. The following documents were enclosed with the application: Copy Private Residential Tenancy Agreement under the Private Housing (Tenancies) (Scotland) Act 2016 between St Andrews Estates and the Respondent and a copy of the rent statement.
2. On 7 March 2019 the Tribunal wrote to the Applicant requesting information as follows:
'Signed authority is required from the Applicant that grants you permission to act on their behalf. Please reply to this office with the necessary information by 14 March 2019 otherwise the application will not be accepted'.
A further extension of time of 7 days was given on 19 March 2019 to respond. The Applicant's Representative stated on 19 March that he did not receive anything on 7 March 2019. A further copy was sent on 20 March 2019, but provoked no response. The Tribunal sent a further e mail on 29 March 2019 requesting a response within 7 days.

3. On 29 March 2019 a permission letter was produced by the Applicant's Representative. It is on headed notepaper of Homes in Focus (the Applicant's Representative) and purports to be signed by Roger Craig of St Andrews Estates & Lotus Group Ltd. It is dated 29 March 2019.
4. A title search shows the owner of the property as being St Andrews Estates (Scotland) Limited with a date of entry of 19 April 2005 (printed 2 April 2019).
5. The Registered Landlord is St Andrews Estates (Scotland) Ltd. The contact address for the landlord is different from the Applicant's and is for a different company agent from that cited as the Representative.
6. On 15 April 2019 the Applicant was further written to requesting clarification of the Applicant's title and interest to bring this Application, to provide confirmation that St Andrews Estates (Scotland) Ltd are aware of and consented to the tenancy agreement and are aware of and consent to the Application. A response was required by 29 April 2019; otherwise the application might be rejected.
7. On 13 May 2019 the Applicant was further written to requesting a response by 27 May 2019.
8. On 16 May the Applicant's Representative e mailed the Tribunal indicating, *"this portfolio was known to us as St Andrews Estates and registered with Companies House as below. This portfolio of which 43a Perth Road was one property was sold on 1 November 2018 to The Lotus Group. The Lotus Group now own the property and have taken over all associated contracts. St Andrews Estates (Scotland) Real Estate)Limited matching previous names St Andrews Estates (Scotland) Holding, SC 344957, incorporated 26 June 2008, East Kingsway Business Centre Mid Craigie Trading Estate, Mid Craigie Road, Dundee, Tayside, DD4 7RH.."*
9. On 29 May 2019 the Applicant was further written to requesting that they supply a copy of the Applicant's title deed for the property, or other evidence of ownership of the property by the Lotus Group, as the title deeds held by the Tribunal show the current owner as St Andrews Estates (Scotland) Limited. A response was required by 12 June 2019 otherwise the application may be rejected.
10. No further communication was received by the Tribunal.

Decision

11. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

"Requirements for making an application

- 5.—(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 lodgement 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 required manner for lodgement. "*

12. 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."

13. I considered the application in terms of Rule 70 of the Procedural Rules. That Rule provides:

'Application for civil proceedings in relation to an assured tenancy under the 1988 ActS

70. Where a person makes any other application to the First-tier Tribunal by virtue of section 16 (First-tier Tribunal's jurisdiction in relation regulated and assured tenancies etc.) of the 2014 Act, the application must—

(a) state—

(i) the name and address of the person;

(ii) the name and address of any other party; and

(iii) the reason for making the application;

(b) be accompanied by—

(i) evidence to support the application; and

(ii) a copy of any relevant document; and

(c) be signed and dated by the person.'

14. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

15. After consideration of the terms of the application and the various documents produced, I consider that the application should be rejected on the basis that that it would not be appropriate to accept the application under Rule 8 (1) (a) and (c). The application should be rejected.

Reasons for Decision

16. The Tribunal must have regard to the mandatory requirements contained in Procedural Rules 5, 8 & 70.

17. The Application is made under Rule 70 which relates to tenancies granted under the Housing (Scotland) Act 1988. This Application relates to a tenancy granted

under the Private Housing (Tenancies) (Scotland) Act 2016. It is made under the wrong Rule of Procedure.

18. In addition, the Applicant has not responded to the request for further information and documents of 29 May 2019. The Tribunal is not satisfied that the Applicant has right and title to make the Application and the information which has been provided does not satisfy the Tribunal on that point, nor does it satisfy the Tribunal that the Applicant's Representative has proper authority to act for the correct Applicant.

19. Accordingly, it would not be appropriate to accept the application under Rule 8 (a) and (c) as it has no prospect of success.

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.

Susan Christie

Susan Christie
Legal Member
26 June 2019