

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



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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 Procedural Rules")

in connection with

24 Wallfield Crescent, Rosemount, Aberdeen, AB25 2JX

**Case Reference: FTS/HPC/CV/19/1230**

**Mrs Isabella Sutherland, 55 View Terrace, Rosemount, Aberdeen, AB25 2RS ("the  
applicant")**

**Mr Grant Collyer, address unknown ("the respondent")**

On 23 April 2019, an application was received from the applicant. The application was made under Rule 111 of the Procedural Rules being an application for civil proceedings in relation to a private residential tenancy. The respondent's address was stated on the application form to be c/o Aldi Cornhill Shopping Arcade, Aberdeen AB16 5UT. Along with the application form the applicant lodged a copy of the lease agreement, photos of the Property, details of deposit, bank statements, text messages and invoices for repairs.

By letter dated 25 April 2019 the Tribunal asked the applicant for a the address of the

respondent. The applicant lodged a request for Service by Advertisement on the grounds that she had sent a text message to the respondent asking for a forwarding address and no response had been received. The Tribunal wrote again on 21 May 2019 asking for details of the text message and for any further information about her attempts to find an address for the respondent. The applicant replied on 24 May with copies of facebook messenger messages between the parties. The Tribunal wrote again on 13 June asking again what steps had been taken to obtain the current address of the respondent. The Tribunal also asked for a rent statement, information about the deposit, a receipted invoice for cleaning, a receipted invoice for the locks, a receipted invoice for disposing of rubbish, missing equipment and redecoration and also asked for a copy of the applicant's title to the Property. The Tribunal asked for a response by 4 July 2019. The applicant emailed the Tribunal on 13 June 2019 asking the following:

'Can you please advise how we find out someone's address when they vacated the property without handing back any keys let alone where they are moved to.'

The Tribunal responded on 14 June 2019 advising that the Tribunal was unable to advise parties and that parties were recommended to seek their own legal advice if they felt they needed it. The applicant was advised her case was on hold until the date specified on the letter. The Tribunal wrote again on 23 July 2019 and stated

'We note that you have failed to provide the information requested in our letter of 13 June 2019. Please provide this information failing which the president may decide to reject the application.' The applicant was asked to respond by 6 August 2019. The No response has been received.

## **DECISION**

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."*

After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

### **REASONS FOR DECISION**

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.

The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant's representative is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

#### **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.

Anne Mathie  
Legal Member

16 August 2019