



**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

Aragon, Duncanshill, Thurso ("the property")

Case Reference: FTS/HPC/CV/20/1335

Yvonne Fitzgerald, Rivendale, Duncanshill, Thurso ("the Applicant")

David Paterson, Aragon, Duncanshill, Thurso ("the Respondent")

1. By application received on 15 June 2020 the Applicant seeks a payment order for unpaid rent in relation to the property. A related application for an eviction order was also lodged.
2. On 29 June and 5 August 2020 the Tribunal sent an email asking the Applicant to provide evidence of the arrears of rent, in the form of a rent statement, and a replacement section of the application form which specified the amount of the payment order being sought. On 5 August 2020 the Applicant notified the Tribunal that the Respondent had moved out of the property and that she was now only seeking a payment order. In response the Tribunal asked the Applicant to confirm that the eviction application was being withdrawn and asked her to provide a new address for the Respondent. No response was received. On 3 September 2020 a letter was issued to the Applicant directing her to provide the documents previously requested. In addition, the Applicant was asked to provide an address for the respondent or complete an application

for service by advertisement, by 17 September 2020, or the application may be rejected. No response has been received.

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) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this in the application and complete a request for service by advertisement in accordance with paragraph 5.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these rules which the applicant attempted to serve on the other party and evidence of attempted service.

(6) The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted. “

- 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 111. This rule relates to civil proceedings in relation to private residential tenancies under the Private Housing Tenancies (Scotland) Act 2016. In terms of Rule 111, an Applicant is required to provide “evidence to support the application” and a copy of any “relevant document”. In the application form, the Applicant states that she is seeking a payment order, although she does not specify the sum being sought. The Tribunal has written to the Applicant on two occasions advising that she requires to amend the application which has been lodged to specify the sum being sought by way of a payment order. She has also been directed to submit evidence in the form of a rent statement. The Tribunal has also notified the Applicant that she requires to provide an address for the Applicant, or make an application for service by advertisement, as required by Rule 5. No response has been received.
6. The Applicant has failed to meet the mandatory requirements to allow the application to proceed under Rule 111 and has failed to provide further information and documentation, 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
30 September 2020