

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

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**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

10 Hume Drive, Bothwell, G71 8SH

**Case Reference: FTS/HPC/CV/19/2116**

**Mr Balhar Sander, 1 Fernhill Grange, Bothwell, G71 9JF ("the applicant")**

**Ms Samantha Clelland, 10 Hume Drive, Bothwell, G71 9JF ("the respondents")**

On 5 July 2019, an application was received from the applicant's representative, Lay Representation Project. The application was made under Rule 111 of the Procedural Rules being an application for civil proceedings in relation to a private residential tenancy. Along with the application form the applicant's representative lodged a copy of an email dated 15 May 2019 containing a WhatsApp message from the respondent acknowledging her obligation to pay rent and a rent statement prepared by the applicant's representative. A mandate was also lodged authorising the applicant's representative to act on his behalf.

By letter dated 8 April 2019 the Tribunal asked the applicant's representative for

clarification regarding the designation of the applicant in the following terms:

*"The application is made in the name of Balhar Sander as the applicant. The title sheet to the property shows the heritable proprietor of the property as being Joseph Sander. Please explain: the discrepancy between the two names; on what basis Balhar Sander has title to sue; confirm which party you act for; and whether you wish to amend your application."*

A response was requested by 8 August 2019 and the applicant's representative was advised that if we did not hear back within this time, the President may decide to reject the application.

The applicant's representative replied by email dated 7 August 2019 to say that he had been instructed by Balhar Sander who was the landlord in terms of the lease lodged. His son Joseph had been acting as a link as most of the contact had been done by email. The applicant's representative asked for more time to clarify the position and was granted further time until 12 August 2019.

By email dated 13 August 2019 the applicant's representative responded to clarify that Joseph Sander of 74 White Lion Road, Amersham, HP7 9JS was the registered owner of the property which was leased out under the management of his father Balhar Sander. In the circumstances, the applicant's representative sought a period of time to prepare and lodge an amendment to the application.

The Tribunal wrote again to the applicant's representative on 27 August 2019 asking for the amended application to be lodged within 14 days. An amended application was lodged with the Tribunal by email dated 10 September 2019. In the amended application the respondent's address was left blank as she had vacated the property. The Tribunal wrote to the applicant's representative on 27 September 2019 asking what steps had been taken to trace the respondent and asking whether service by advertisement was being sought. A response was requested by 25 October 2019 and the letter stated that if there was no response within this time the President may decide to

reject the application. An email was received from the applicant's representative dated 22 October 2019. He advised that his client wished to have service effected by advertisement. He advised that his client had certain social media addresses for the respondent. He advised that the costs of instructing sheriff officers to trace the respondent would be prohibitive. He advised that the respondent had been asked to provide a forwarding address which she had refused to do. The Tribunal wrote once again on 4 November 2019 asking for copies of emails, messages etc enquiring of the respondent's current whereabouts with the local authority and/or friends of the respondent. A response was requested by 18 November failing which the President may decide to reject the application. This request was repeated by letter dated 29 November 2019 asking for a response by 13 December 2019 failing which the President may decide to reject the application. 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  
20 December 2019