



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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

123 Albert Street, 2/1, Dundee DD4 6PR

("the property")

Case Reference: FTS/HPC/CV/20/2390

Area Estates Ltc ("the applicant")

Martin Ramsay ("the respondent")

1. The First-tier Tribunal, Housing and Property Chamber (FTT) received an undated and unsigned application under Rule 91 of the Procedural Rules for an unspecified sum on or around 16 November 2020.
2. The application showed as the documents to be lodged in connection with the application:- Rent statement, Joiner invoice, Tenancy agreement copy and quote for replacement door. What was actually sent was a statement not showing a running total, a joiner invoice, sheriff officer invoice.
3. The application form did not include any form of description of a financial amount sought by the Appellant.

4. No tenancy agreement was submitted.
5. On 25 November 2020 the FTT wrote to the applicant's representatives and the following was requested:

"1. The application is made under rule 91, which relates to regulated tenancies. Please provide a tenancy agreement copy. If you are relying on the tenancy agreement lodged with the eviction case for a property described as 123 Albert Street Flat 2nd Floor left rather than Flat 2/1 (Flat C) please explain how this can possibly fall under this provision when the tenancy agreement appears to have commenced in 2018 and thus at a time when only Private Residential Tenancies could be created between private landlords and tenants?

2. Please clarify the address

3. Please provide a rent statement showing the date, rent due, rent paid and running total. The format in which the rent statement submitted does not provide the information on one page and it is not possible to tell which payments relate to which date etc.

4. Please sign and date the application

5. Please provide the information required in part 5 c of the application, currently this does not contain an amount to specify the order you are seeking.

6. Please verify which steps you have taken to ask the Respondent for payment

7. Please relate any demands other than rent to an appropriate provision in the tenancy agreement or explain the legal basis for the demand.

Unless all of the above is provided to the satisfaction of the Tribunal the application may be rejected."

6. In answer the applicant's representative sent an email on 1 December 2020 including now two tenancy agreement copies, one for a Short Assured Tenancy commencing on 21 July 2017 ending on 31 December 2017 and one for a Short Assured Tenancy commencing on 1 January 2018 ending on 30 June 2018, the same joiner invoice and clarification that the sum sought would be £3665 and £198 for the joiner invoice and an amount, unspecified, for a replacement door. A further rent statement, again without a running total, was submitted. No quote for the door was provided and the application remains unsigned and undated. The email did not address how the application could be made under rule 91 of the Procedural Rules or what the sum was the applicant was ultimately asking for.
7. The FTT again wrote to the applicant's representatives on 17 December 2020 requesting the following:

"Further information is required to enable your Application to be considered.

The tribunal has considered your response to its further information request of 23 November 2020. There are a number of matters outstanding. Please number your responses in accordance with the numbering below. You may wish to seek legal advice prior to responding.

1. The application is made under rule 91, which relates to regulated tenancies. Please provide a copy of the tenancy agreement you are relying on and clearly state which tenancy agreement that is. If you are relying on a tenancy agreement lodged with the

eviction case EV/20/2363 for a property described as 123 Albert Street Flat 2nd Floor left rather than Flat 2/1 (Flat C) this should be produced for this case. You have now produced two tenancy agreements in the eviction case dated 21 July 2017 and 24 November 2017, the second of which purports to create a short assured tenancy commencing on 1 January 2018. If you are relying on either of those tenancy agreements, please explain how either can call under Rule 91.

2. Please notify the tribunal if you wish to withdraw the Application under Rule 91 in order to submit an application under a different rule, depending upon the type of tenancy you submit that this is.

3. Please clarify the address of the Property and indicate if you wish this application (or any fresh application submitted in terms of point 2) to be joined with the eviction case EV/20/2363.

4. Please provide a rent statement showing the dates upon which rent was due, amount of rent due, amount of rent paid and a running total for arrears.

5. Please sign and date this application or any application you submit in its place.

6. Please provide the information required in part 5 c of the application. You must specify the order you are seeking in that part of the Application, with a figure for the financial sum sought; together with a breakdown if there is more than one head of claim.

7. Please verify which steps you have taken to ask the Respondent for payment.

8. Please provide the basis in the tenancy agreement for any heads of claims for payments other than rent; or otherwise explain the legal basis for the demand.

9. Please provide supporting evidence for any claims other than rent, for example invoices.

Please provide the required information by [14 days] otherwise the Application may be rejected.

8. The applicant's representatives answered this by email of 17 December 2020, which is referred to for its terms and held to be incorporated herein. This included the statement that the tenancy is not a regulated tenancy, that the forms are "to be signed and dated", a rent statement which showed as the outstanding sum £3713 and not the sum of £3665 as stated in the amount specified the further explanation and still no estimate or invoice for the door claimed at £400.

DECISION

1. 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."

2. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

3. In terms of Rule 91 of the Procedural Rules an application under that Rule would have to be for civil proceedings in relation to a regulated tenancy. The Rule requires the application to be signed and dated (Rule 91 (c), it requires evidence to support the application to be submitted together with a copy of any relevant document (Rule 91 (b).
4. The applicant's representatives themselves confirm that the tenancy agreement they rely on does not relate to a regulated tenancy.
5. No evidence was submitted to show that the tenancy the matter relates to was a regulated tenancy.
6. The application is not signed and dated.
7. Not all aspects of the claim are accompanied by vouching.
8. The FTT had asked for the above matters to be addressed and rectified and had given the

applicant's representatives two opportunities with detailed explanations as to what was required to process the application. The necessary steps to allow the application to be processed were not taken. The applicant's representative was advised of the possibility to withdraw the application under Rule 91 and lodge a fresh application under the Rule corresponding to the tenancy agreement.

9. It would not be appropriate accept the application under Rule 91 as the application is clearly not for payment of outstanding sums under a regulated tenancy.
10. An application that is not signed and dated also would not fulfill the lodging requirements for an application under other rules relating to applications for civil payment orders.
11. It is not appropriate for the Tribunal to entertain an application unless the lodging requirements for such an application are met.
12. The application is rejected because the application does not meet the lodging requirements stated in terms of Rules 91 of the Procedure Rules. The application has to be rejected.

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.

Petra Hennig McFatridge

Legal Member

12 January 2021