



**DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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 Rules”)**

**Chamber Ref: FTS/HPC/CV/19/2635**

**Re: Property at 6 Hunter Drive, Irvine, KA12 9AT (“the Property”)**

**Parties:**

Naren Vaid, Patricia Vaid (“the Applicants”)  
Karen Coogan (“the Respondent”)

**Joel Conn (Legal Member)**

**BACKGROUND**

1. On 10 May 2019 the Applicants drafted an application under Rule 111 of the Rules, being an “application for civil proceedings in relation to a private residential tenancy”, submitting it shortly thereafter. The application sought an “order to pay the arrears and for the damage” to the Property against the Respondent, a tenant at the Property. The Respondent’s address was listed as “unknown”.
2. The application did give a figure for the alleged rent arrears but was silent on the sum sought in damages. Various documents accompanied the application, including invoices, but there was no obvious attempt to specify the amount sought in damages. At least one of the invoices (from a Sheriff Officer) was not obviously connected to “damage” to the Property.
3. On 23 August 2019 the Tribunal wrote to the Applicants’ representative on two matters, one being directing them to the Tribunal’s webpage which contained links to guidance and application forms for Service by Advertisement against a party’s whose current address was unknown. A deadline of 30 August 2019 was provided to respond. A response was received by email from the Applicants’ representative on 23 August 2019 on the other matter raised by the letter but no response or application was provided on Service by Advertisement.
4. On 26 August 2019, by email to the representative, the Tribunal noted the response on the other matter and reminded the representative that the

completed Service by Advertisement form was still awaited. As of today's date, no further contact has been received from or on behalf of the Applicants.

5. The application was considered by me as the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

## **DECISION**

6. I considered the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

*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.*

*(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 any attempted service. ...*

*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—*

...

- c) *they have good reason to believe that it would not be appropriate to accept the application;*

...

*(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.*

7. Rule 111 requires:

*Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—*

*(a) state...*

*(ii) the name and address of any other party [being, in this case, the Respondent as tenant].*

8. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

*(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*

*(2) Dealing with the proceedings justly includes—*

*(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*

*(b) seeking informality and flexibility in proceedings;...*

*(e) avoiding delay, so far as compatible with the proper consideration of the issues.*

9. After consideration of the application and supporting papers, I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application lacking a current address for the Respondent, it cannot be accepted.

10. The Applicant has been afforded sufficient time to seek service by advertisement (or to provide a current address for the Respondent). No application has been received and the Tribunal is unaware whether any steps have even been taken to seek to trace the Respondent. In consideration of the over-riding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters.

## **RIGHT OF APPEAL**

### **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:-

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Joel Conn

Legal Member/Chair

16 September 2019

Date