



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER
Q.C., LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")

in connection with

Ref: FTS/HPC/CV/20/2655

50 Hopehill Road, Flat 2/1, Glasgow, G20 7JP ("the Property")

Mr Andrew MacKinnon 13 Wellington Street, Dunoon, PA23 7LB ("the Applicant")

Countrywide Lettings Customer Care Executive, Lettings and Sales Centre, Countrywide House, Lake View Drive, Annesley Nottingham, NG15 0DT ("the Respondent")

DECISION

It was determined by the Legal Member acting under the delegated powers of the Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the Application must be rejected in terms of Rule 8(1).

REASONS

1. An application dated 17 December 2020 was received from the Applicant ("the Application"). The Application was made under Rule 111 of the 2017 Rules, being an application for civil proceedings in relation to a private residential tenancy.

2. An application made in terms of Rule 111 must-

(a) State-

- (i) The name and address of the person;
- (ii) The name and address of any other party; and
- (iii) The reason for making the application;

(b) Be accompanied by

- (i) Evidence to support the application; and
- (ii) A copy of any relevant document; and

(c) Be signed and dated by the person.

3. The Applicant submitted an incomplete application and it was not accompanied by all of the required documents.

4. On 15 January 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant dated 18 January 2021, as follows:

“I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following:

Please provide a copy of the tenancy agreement and provide evidence of payment of the deposit and the amount of the deposit.

Please reply to this office with the necessary information by 1 February 2021. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.”

5. The Applicant replied on 29 January 2021, in the following terms:

“Many thanks for your email below. As requested, please find attached evidence of the payment and amount of the deposit administered by MyDepositsScotland on behalf of Countrywide Residential Lettings.

With regards to the tenancy agreement, it may be helpful if I explain that following my move from 50 Hopehill Road in May I moved the majority of my possessions into storage in Glasgow. This was in the hope that I would move back to Glasgow once the pandemic was over and I'm no longer required to look after my parents or able to work from home.

Due to lockdown restrictions I've been unable to attend the storage facility to remove my possessions or obtain my tenancy agreement. Despite this, on a number of occasions throughout my dispute with Countrywide I've requested, and they've agreed, to provide me with a copy of my lease. Sadly to this date it has never been provided.

Therefore, I'd appreciate any guidance you may have or if you could detail anything alternative I could provide, such as bank statements confirming my rent payments. If the tribunal are unable to process my case without a copy of the lease I'd be grateful for an extension to allow me to provide this information or if you could confirm whether the tribunal is able to request this directly from Countrywide.

With many thanks for your attention to this matter.”

6. On 8 February 2021, the Application was considered by a legal member acted under the delegated powers of the Chamber President. A letter was sent to the Applicant dated 9 February 2021, as follows:

“I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following:

The legal member has considered your recent correspondence, she asks that you make a further request to the letting agent for a copy of the tenancy agreement. If you are unable to provide a copy of the tenancy agreement then it may be possible to proceed by you providing details of the main terms of the tenancy agreement (including names of the parties; start date; address of the property; rent payable; and deposit paid) and provide any available evidence to show those terms.

She also raises the question of the appropriate respondent. She notes that you have stated that the respondent is the letting agent, however your claim appears to be against the landlord. Given that your contract is with the landlord it is not clear why the letting agent has been named as the respondent. She asks that you consider this matter, and if appropriate amend the application form in relation to the respondent. You will require to provide the name and address of the landlord if you are amending the application form (and in that regard you may find it helpful to have a copy of the tenancy agreement as it may contain those details if you do not already hold them).

Please reply to this office with the necessary information by 23 February 2021. If we do not hear from you within this time, the President may decide to reject

the application.”

7. The Applicant did not reply within the stipulated timescale.
8. On 11 March 2021, the Application was considered by a legal member acting with the delegated powers of the Chamber President. On 11 March 2021, a further request for the said information was sent to the Applicant, in the following terms, attaching a copy of the letter of 9 February 2021:

“I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following:

We refer to our letter to you dated 9th February 2021, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 7 days of this letter or the Tribunal may well reject your application.

Please reply to this office with the necessary information by 18 March 2021. If we do not hear from you within this time, the President may decide to reject the application.

If you require any further information, please contact us, quoting your reference number.”

9. The Applicant failed to respond within the stipulated timescale.
10. On 29 March 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.

11. Rule 8 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."

12. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's failures to respond, it was determined that the requirements for making an application under Rule 111 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 111. The Applicant has failed to respond to two of the tribunal's further information requests. The Applicant has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

13. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.
Legal Member
29 March 2021