



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/19/2964

Re: Property at 10 (Flat 4/1) Haughview Terrace, Glasgow, G5 0HB (“the Property”)

Parties:

Philip Rough (“the Applicant”)
Purplebricks (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 20 September 2019 the Applicant drafted an application under Rule 111 of the Rules in Form F, being an “application for civil proceedings in relation to a private residential tenancy”, submitting it by email that day. The application sought two orders for payment against the Respondent, apparently in regard to the Respondent acting as the Applicant’s Letting Agent.
2. Notwithstanding that the application appeared misconceived as an application under Rule 111 (in that appears to seek “enforce [the] letting agent code of practice” which should have been brought as an application under Rule 95 using Form J) superficially it complied with the basic requirements of Rule 111 (detailed below) but for the fact that it was lacking the final page of Form F and thus a signature by the Applicant. As a result, the Tribunal’s clerks processed the application further and on 24 September 2019 wrote to the Applicant requesting the final page of the Form and a signature. The Applicant was given until 1 October 2019 to respond. No response was received.
3. The application was considered by me as Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8. This was the first occasion that the application has been considered at “sift” by a Legal Member acting as In-House Convenor.

DECISION

4. 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. ...

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.

5. 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... [Private Housing (Tenancies) (Scotland) Act 2016], the application 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.*
6. 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.*
7. 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 signature of the Applicant or a date, it cannot be accepted.
8. The Applicant has been afforded sufficient to provide a complete form with signature and date. 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. In any event, it is unlikely that – on full consideration – the application would be accepted given that all documentation accompanying the application would appear to be related to the Applicant’s contract with the Respondent as a letting agent. On the face of it, nothing relates to an application for “civil proceedings arising from a private residential tenancy” per section 71(1) of the 2016 Act. Therefore, it is highly unlikely that the Applicant would be capable of providing “evidence to support” such an application under Rule 111. Even if the Applicant were afforded further time to provide a signed and dated final page of the Form F, it would be judged incomplete under Rule 111(b)(i) even if a signed and dated final page of the Form F were submitted.

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

Date

16 October 2019