

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



**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

12 Glenburn Street, Glasgow, G20 0RG

**Case Reference: FTS/HPC/EV/18/3432**

**Ms Emma Kerr or Findlay, 14 Lonsdale Road, Glasgow ("the applicant")**

**Ms Collette Young, 12 Glenburn Street, Glasgow, G20 0RG ("the respondent")**

On 17 December 2018, an application was received from the applicant's solicitors. The application was made under Rule 109 of the Procedural Rules being an application for a Private Residential Tenancy Eviction Order. The following documents were purportedly enclosed with the application:-

- Copy Bank Statements
- Section 11 Notice
- Copy Notice to Leave and Execution of Service

In the event, the Section 11 Notice was not included and this was requested by the Tribunal by letter dated 17 December 2018. This was subsequently received along with proof of

service attached to emails from the applicant's solicitors dates 19 and 20 December 2018.

The Tribunal wrote to the applicant's solicitors on 14 January 2019 requesting the following further information:

1. 'With respect to your application can you please provide a signed copy of the lease if possible.
2. Can you please provide a rent statement detailing the sums due, sums paid and the balance outstanding.
3. And as your application does not state the amount of arrears outstanding can you please amend the application to state the amount of arrears as we need evidence to support the submission.
4. Can you also please advise if Mark McCormick the joint owner is to be a party to this application ie is he a joint landlord or if not can he provide consent to the raising of this action.'

A response was requested by 28 January 2019.

The applicant's solicitors emailed the Tribunal on 28 January 2019 asking for an extension of time to respond as the solicitor dealing with the matter had now left the firm. An extension of time was granted until 1 February 2019. The applicant's solicitors emailed the Tribunal on 1 February 2019 to advise that they had identified a conflict of interest and requested 28 days for the applicant to instruct new agents. The applicant emailed the Tribunal directly on 5 February 2019 to advise that she was finding it hard to get a new lawyer to take on the case and asked if an extension of time had been granted. She also asked if the model tenancy had been submitted to the Tribunal by her former agents. The Tribunal emailed back to say that the case was with a legal convener. The applicant emailed the Tribunal again on 11 February 2019 asking how to provide evidence that rent had not been paid. She was advised by email from the Tribunal that they could not give legal advice but that the applicant could lodge documents she felt to be relevant and was warned that these would be passed to the parties in the case.

The Tribunal wrote to the applicant on 18 February asking to receive the further information requested by 15 March 2019. There was no response to this letter and the

Tribunal wrote again on 25 March 2019 asking for the requested information by 8 April 2019 failing which the President may decide to reject the application. The applicant emailed on 25 March to say she was having trouble getting a lawyer to take on the case and that she was trying to seek advice but that the tenant had left the Property.

## 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 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**

3. 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.
4. 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 is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
5. 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.

A Mathie

Anne Mathie  
Legal Member  
26 April 2019

