



**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

49 Wren Road, Greenock, PA16 7NH

**Case Reference: FTS/HPC/CV/20/0896**

**Carolyn McWilliams, 7 West Renfrew House, 26 Brougham Street, Greenock, PA16 8ad ("the applicant")**

**Danielle Miller, formerly of 49 Wren Road, Greenock PA16 7NH ("the respondents")**

1. On 11 March 2020 The First-tier Tribunal for Scotland, Housing and Property Chamber (the tribunal) received an application dated 11 March 2020 from the applicant's representatives Inverclyde Letting Agency. The application was made under Rule 70 of the Procedural Rules being an application for civil proceedings in relation to an assured tenancy under the 1988 Act. The application was accompanied by a rent statement showing the period of 20 July 2018 to 10 March 2020 and a tenancy agreement which commenced on 10 August 2018 and thus clearly was a tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
2. The application asked for a payment order for the full amount of arrears set out in the rent statement, namely £2,512.

3. The application was lodged together with an application for eviction of the Respondent from the property. The eviction application was given the case number FTS/HPC/EV/20/0893.
4. The tribunal had previously received an application relating to the same parties and the same property under case reference FTS/HPC/CV/192470 and had granted a payment order to the applicant for the sum of £1,760 on 7 October 2019.
5. On 29 April 2020 the applicant's representatives sent an email under case reference FTS/HPC/EV/20/0893 & FTS/HPC/CV/20/0896 to the tribunal stating:" The tenant has vacated the property and posted the keys to us. I would be grateful if you could therefore cancel the application. Regards Ali"
6. On 1 May 2020 the tribunal requested by email confirmation if both applications should be withdrawn. On 11 May 2020 the applicant's representatives emailed the tribunal confirming that only the eviction application should be withdrawn and that they wish to proceed with the civil application. A further rent statement now showing the sum of £2,260.923 was attached to this email.
7. On 15 May 2020 the tribunal asked the applicant to provide further information as follows:  
"Before a decision can be made, we need you to provide us with the following:  
  
You made the application stating under entry 5 that it is an application in terms of Rule 70. Rule 70 relates to applications for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988. The tenancy agreement submitted in evidence states that it is a Private Rented Tenancy agreement and was entered into after 1 December 2017 when the Private Housing Tenancies (Scotland) Act 2016 came into force. Civil applications for PRTs can be made under Rule 111. Please confirm under which Rule you wish to apply and if necessary and if necessary amend the application by submitting a replacement page.  
  
You stated in your email of 29 April 2020 that the Respondent has vacated the property and posted the keys back to you. Please amend the existing application to show the current address of the Respondent as in terms of your email of 29 April 2020 the Respondent clearly no longer lives in the property. If necessary please consult the website for options regarding an application for service by advertisement and the requirements of proving all steps taken to ascertain a forwarding address, in particular tracing agency

reports or Sheriff Officer's reports.

It appears that a previous payment order for the amount of £1,760 was granted on 7 October 2019. Please clarify if the amount entered in your current application represents the total amount you are seeking to recover including the amount of the previous payment order made or whether this is a separate amount over and above the previous order made. You cannot ask for a further payment order for an amount for which you have already obtained an order. If necessary amend your application accordingly.

Please reply to this office with the necessary information by 29 May 2020. If we do not hear from you within this time, the President may decide to reject the application."

8. No reply has been received to date.
9. The documents referred to above are referred to for their terms and held to be incorporated herein.

## **DECISION**

10. 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."*

11. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.

#### **REASONS FOR DECISION**

12. The application was supposedly made under Rule 70 of the Procedural Rules. However, the application clearly related to a tenancy which was entered into after the Act came into force and thus was a Private Residential Tenancy under the 2016 Act.

13. Any application for a payment order relating to such a tenancy must be made in terms of Rule 111 of the Procedural Rules. In assessing whether or not the application can be accepted I have thus applied the lodging criteria for Rule 111. I would, however, state for the avoidance of doubt that the issue which leads me to reject the application would have arisen under both Rule 111 and under Rule 70 and thus the outcome would have been the same had I considered the application under the lodging requirements of Rule 70 of the Procedural Rules.

14. The lodging requirements under both Rules are set out below:

#### **Application for civil proceedings in relation to a private residential tenancy**

**111.** 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—

(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.

**Application for civil proceedings in relation to an assured tenancy under the 1988 Act**

**70.** Where a person makes any other application to the First-tier Tribunal by virtue of section 16 (First-tier Tribunal's jurisdiction in relation regulated and assured tenancies etc.) of the 2014 Act, 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.

15. Under Rule 111 (a) (ii) the application must state the name and address of the other party. The same requirement is stated in Rule 70 (a) (ii).

16. Whilst the application stated the name and address of the respondent as Danielle Miller, 49 Wren Road, Greenock PA16 7NH, the applicant also in the email of 29 April 2020 confirmed clearly that the respondent had left the property and was no longer residing there.

17. The Tribunal then contacted the applicant on 15 May 2020 and requested an up to date address for the respondent as it was clear that the respondent's address on the application was no longer the respondent's address. The tribunal gave the applicant until 29 May 2020 to provide this information.

18. The applicant was also advised that if no up to date address could be provided,

an application for service by advertisement could be made. The applicant was referred to the information regarding this on the tribunal's website. The applicant did not provide an up to date address for the respondent and did not apply for service by advertisement.

19. The information required in terms of Rule 111 (a) (ii) or under Rule 70 (a) (ii) of the Procedural Rules has not been provided, neither has the other information requested from the applicant.

20. The applicant has failed to provide an address for the respondent. The lodging requirements for an application under Rule 111 and under Rule 70 are not met. The application was not validly made. The Tribunal cannot entertain the application. The application is 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

03 July 2020