



**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
109 Windsor Drive, Penicuik, Midlothian ("**the property**")

Case reference FTS/HPC/CV/21/0432

The parties:

Robert Docherty ("**the applicant**")

Ronald McKenzie ("**the respondent**")

A BACKGROUND

1. On 24 February 2021 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) an application made under Rule 111 of the Procedural Rules, which stated as the applicants Mr Docherty and a Maria Geibler. The application did not provide the Respondent’s full postal address. The application did not provide details of the tenancy agreement. No documents other than emails from the applicant were lodged with the initial application.
2. The emails with the narrative provided by the applicant are referred to for their terms and held to be incorporated herein.
3. The main aim of the application appeared to be that compensation of £15,000 should

be paid to Ms Geibler, £1000 each to the applicant and Ms Geibler and the respondent should reimburse the Council for funds it paid for homeless accommodation for the applicant.

4. The email of 23 February 2021 states: “She wanted to come to Scotland for a year to learn English and our Cultures ..She answered Ronny Mckensies advert on the Internet. Renting a room in his house in Penicuik. With him a live in landlord. For £450 per monthShe took up his offer and moved into his house in June 2019...But was totally denied any form of a lease from the Landlord....the agreement was all the bills would stay in his name only and he would pay them as part of her rent.....He is a registered landlord....He should have known he must register her with the council as living in his house long term .ie 12 months she lived there.”
5. On 10 March 2021 the Tribunal wrote to the applicant’s representatives requesting the following information to be submitted by 24 March 2021 as follows: “In order to consider the application lodged with the Tribunal on 24 February 2021 we require the following further information and documentation:
 1. *You indicate in your email that this is joint complaint. If you wish to make a joint application you would have to submit an application stating the name and address and contact details of both Applicants and have this either signed and dated by both Applicants or submit a signed and dated written authorisation from the second Applicant that the application is made on their behalf by another person.*
 2. *You made an application in terms of Rule 111 but seem to rely in your narration of the circumstances on the issue of whether or not the landlord correctly terminated your residence at the property. Please seek independent legal advice e.g. from the CAB or Shelter and consider whether the application should be made under a different more appropriate Rule which deals with such circumstances.*
 3. *If you make a civil claim under Rule 111 you must specify what order for payment you are seeking. If you wish your claim to be considered you would have to amend the application to show what order you want the Tribunal to make and enter this is part 5 c of the application form. You then have to provide the reason why you consider that you are entitled to that payment in part 5 b. Again it would be beneficial if you were able to access legal advice on this matter to clarify and quantify your claim.*
 4. *In order to lodge any application you must provide the details of the Respondent’s*

address. In this case you have not provided a house number or name and you have not provided a postcode or telephone number.

The Tribunal cannot accept an application unless the postal address of a Respondent is provided or an application for service by advertisement is lodged together with proof of steps undertaken to obtain a full postal address such as a tracing report or sheriff officer's report. The Tribunal will require the full address of the Respondent to be stated on the application.

5. Please note that the Tribunal has no jurisdiction on matters such as breaches of the Coronavirus restrictions and has no jurisdiction in terms of criminal law. Unless the matters above are provided the application would likely have to be rejected."

6. The applicant wrote further emails with further narrative on 11 and 25 March 21. In the email of 25 March 21 he indicated that the entry in part 5c should be "approximately £15,000 to Maria." He further stated the claim includes £1,000 each for stress caused by the respondent and reimbursement of the Council's payments for homeless accommodation for the applicant. In the email the address details sought were not provided, neither was any authorization from Ms Geibler or her signature on an amended claim form.
7. On 25 March 2021 the Tribunal emailed a further, even more detailed letter seeking further information to the applicant asking for a reply by 14 April 2021. As of the date of this decision, 22 April 2021 no reply has been received by the Tribunal.

B 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 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.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

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.

D REASONS FOR DECISION

1. The Application is made under Rule 111 of the Procedural Rules. Rule 111 (a) (i) of the Procedural Rules states that such an application must state the name and address of the tenant or former tenant making the application. Here the address for Ms Geibler is missing. Whilst the applicant provided a c/o address for her in Scotland, he also repeatedly stated in the emails lodged with the application that Ms Geibler returned to Germany and the c/o address is clearly not her residential address. The applicant was repeatedly asked to provide the address and did not do so. The order sought is a compensation order of £15,000 and a further £1, 000 for Ms Geibler. This application cannot proceed as there is no address for Ms Geibler, she has not made the application and she has not provided written authorisation for Mr Docherty to make a claim on her behalf. Mr Docherty has no interest and title to make an application on behalf of Ms Geibler. The application in that regard is not validly made.
2. Similarly, the applicant is seeking re-imburement of the Council for funds paid for his accommodation by the respondent. The applicant has been asked to specify and clarify his claim but has not provided any legal basis on which he would be able to seek such payment as an agent for the Council. The Council has not made an application for payment to the Tribunal. There is no authorisation of the applicant by the Council to make a claim on their behalf. The Tribunal can see no title or interest of the applicant to make an application on behalf of the Council.
3. With regard to the claim for compensation of £1,000 for the applicant himself, Rule 111 (a) (ii) of the Procedural Rules requires the application to state the name and address of any other party. The Tribunal repeatedly asked for the postal address of the respondent to be provided. The applicant stated in his email of 11 March 2021 he would provide this. This has still not been done. The application does not include all essential information.
4. Rule 111 (b) (i) and (ii) of the Rules of Procedure ask for the application to be accompanied by evidence to support the application and a copy of the relevant document. The Tribunal had repeatedly asked the applicant to provide evidence and further information about the legal basis of the application to ascertain whether the application is made under the correct Rule. This has not been forthcoming. The application does not include all essential information.
5. The applicant had been explicitly asked by the Tribunal to provide further particulars and to complete the application with all essential parts of an application of this nature. He was last written to on 25 March 2021 with a deadline of submission of the information on 14 April 2021.

6. The applicant has not answered the last request for further information.
7. The application in terms of Rule 111 is only validly made if it is signed and dated. The application form is not dated.
8. The application as it stands does not meet the requirements of an application under Rule 111.
9. It would not be appropriate for the Tribunal to accept an application that does not meet the lodging requirements of the Rule under which the application is being made or an application for which the applicant has not evidenced title and interest to make the application. The application is thus 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



Petra Hennig McFatridge

Legal Member

22 April 2021