



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

31 Stronvar Drive, Glasgow, G14 9AN (The Property)

Case Reference: FTS/HPC/CV/21/1333

**Easylet & Maintenance, c/o Easylet & Maintenance, 789 Shettleston Road
Glasgow (Applicant)**

Mrs Sacha McMahon (Applicant's Representative)

Mr Paul Gerrard 31 Stronvar Drive Glasgow, G14 9AN (Responent)

1. On 2nd June 2021, an application was received from the applicant. The application was made under Rule 111 of the Procedural Rules, being an application for an order for payment of rent arrears by the Tenant.
2. The following documents were enclosed with the application:-
 - Copy lease
 - Rent Statement
 - Copy Notice to leave
3. The Tribunal requested further information from the applicant by letter dated 18th June 2021. The Tribunal asked for the following information:-

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

1. It is noted you have provided a care of address for the Applicant could you please provide their actual address as we require this in terms of the Tribunal’s rules.

2. We note that the owner of the property and the registered landlord is Lyndi Pierotti. Please provide evidence that Roano Pierotti has right, title and interest to raise the application.

3. We note that Kim Gerrard is a joint tenant but she is not referred to in the application. Please clarify. Please reply to this office with the necessary information by 9 July 2021. If we do not hear from you within this time, the President may decide to reject the application”

4. No response was received from the Applicant

5. The Tribunal wrote again on 26th July stating:-

“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 Tribunal wrote to you on 18 June 2021 with a request for further information. This has not been received. Please find enclosed a copy of the previous letter.

Please also provide 1. proof of the landlord registration for Mr Romano Pierotti and 2. a rent statement supporting your claim. At present the application is for a payment order for the amount of £2,650 whereas the rent statement lodged only shows an outstanding sum of £2,225. 3. And clarify why the application states as the applicant the letting agent company. The tenancy agreement only shows as the landlord Mr Pierotti, not “Easylet and Maintenance”.

It would perhaps be helpful to lodge a replacement application with the correct details – otherwise you require to provide the necessary amendments to the application. Please reply to this office with the necessary information by 9 August 2021. If we do not hear from you within this time, the President may decide to reject the application.”

6. No response was received.

7. A final letter requesting a response to the two previous letters was sent on 26th August 2021 stating:- *We refer to our letters of 18th June and 26th July to*

which we have not received any response. We enclose copies of both letters which request the further information we require to consider your application fully. If you fail to respond to this request within 14 days (9 September 2021) it is likely your application will be rejected

8. There was no response to this letter and there has therefore been no response to any of the Tribunal's letters from the Applicant or their representative.

DECISION

9. I considered the application in terms of Rule 5 and 8 of the Procedural Rules.

Those Rules provide:-

- 10.

"Rejection of application

Rule 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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 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 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

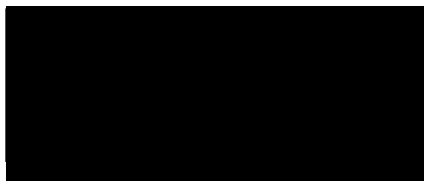
12. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R 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.
13. The applicant has failed to respond to the Tribunal's substantive requests for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. 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.
14. 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.



Jan Todd
Legal Member
5th October 2021