



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

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

in connection with

Flat 1/1 9 Knockside Avenue, Paisley ("the property")

Case Reference: FTS/HPC/CV/20/0626

Gerald Fleming, c/o 63 Causeyside Street, Paisley ("the Applicant")

Gavin Hamilton, Flat 1/1 9 Knockside Avenue, Paisley ("the Respondent")

1. By application received on 21 February 2020 the Applicant seeks a payment order for unpaid rent in relation to the property, in terms of Rule 111 of the Rules. A copy short assured tenancy agreement and rent statement were lodged with the application.
2. On 23 April 2020 the Tribunal sent an email to the Applicant. The Applicant was asked to explain why he was entitled to make the application, as he did not appear to own the property. No response was received. A further letter was issued to the Applicant on 10 July 2020 directing the Applicant to provide a response to the email of 23 April 2020 by 24 July 2020 or the application may be rejected. No response has been received.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the

Chamber Procedural Rules. That Rule provides:-

“(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 lodgment 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 requirement manner for lodgment. “

4. After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5.

Reasons for Decision

5. The Applicant submitted an application for a payment order in terms of Rule 111 of the Procedural Rules. However, as the tenancy lodged with the application is a short assured tenancy and not a private residential tenancy, the application ought to have been made under Rule 70. This Rule states that the application must “(b) be accompanied by – (i) evidence to support the application; and (ii) a copy of any relevant document.” The Applicant did not submit evidence of his entitlement to make the application. On two occasions the Tribunal has written to the Applicant, directing him to provide this information/evidence. No response has been received.

6. As the Applicant has failed to provide evidence required in terms of Rule 70 of the Rules, and has failed to submit the evidence, having been directed to do so in a request for further information by the Tribunal in terms of Rule 5(3) of the Rules, the Legal Member determines that the application cannot be accepted. The application is rejected on that basis.

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.

Josephine Bonnar

Josephine Bonnar
Legal Member
27 August 2020