



**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

The Property at 53 Canal Street, Saltcoats
Case Reference: FTS/HPC/EV/21/0894

Hovepark Properties Ltd 9 Adelaide Crescent Hove, East Sussex BN3 2 JE
("the Applicant")

Ian Davidson 53 Canal Street, Saltcoats (the Respondent)

1. On 1st April 2021, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for eviction of the Tenant from the Property.
2. The following documents were enclosed with the application:-
 - Copy tenancy agreement
 - Copy notice to leave
 - Rent statement
 - Authorisation for the letting agent to act
3. The Tribunal requested further information from the applicant by letter dated

28th April 2021. This letter referred to this application. The Tribunal asked for the following information:-

“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:

- a. Please provide a copy of the section 11 Homelessness Notice to the local authority and proof of service of the document to the local authority.
 - b. Please provide evidence of landlord registration.
 - c. Please provide evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Please reply to this office with the necessary information by 12 May 2021. If we do not hear from you within this time, the President may decide to reject the application.”
4. No response was received and the tribunal wrote again with a reminder asking for the same information and requesting a reply by 8th June 2021 failing which the applicant was advised the application may be rejected.
 5. The Applicant responded on 18th June by e-mail asking *“The tenant has now advised us he will be leaving on the 02nd July 2021. Is it possible that we could put this on hold until after this date?”*
 6. The Tribunal responded on 24th June 2021 stating
“We note that you have asked for the case to be put on hold pending a possible departure of the tenant. The Tribunal cannot put cases on hold and your application has not yet been accepted due to the fact we do not yet have all the information we require to be satisfied it can be accepted. Please respond to our previous letter of 28th April with the information requested or your application will require to be rejected. Please find enclosed a copy of our letter for your information. If you wish to withdraw the application please confirm this in writing and we can withdraw it. Please reply to this office with the necessary information by 8 July 2021. If we do not hear from you within this time, the President may decide to reject the application.
 7. The Applicant did not reply and has failed to respond to the Tribunal’s requests for further information.

DECISION

8. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

9.

"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."

10. 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

11. 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.

12. The applicant has failed to respond to the Tribunal's request 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.
13. 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
27th July 2021