



**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 1/25, 220 Wallace Street Glasgow G5 8AF

Case Reference: FTS/HPC/CV/20/2177

**Mandy Wooderson, BAYLISS COTTAGE, DALMUINZIE ROAD, BIELDSIDE,
ABERDEEN, AAB15 9EB**

Applicant

Countrywide, Representative

**Christopher Robert Roger address unknown
(Respondent)**

1. On 14th October 2020, 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:-
 - Tenancy Agreement dated 28th December 2018
 - Rent statement
 - Letters to tenant dated 29th June 2020

3. The Tribunal requested further information from the applicant by letter dated 26th October 2020, in particular the Tribunal asked for information regarding a forwarding address for the Respondent or if the Applicant wished to apply for service by advertisement and further details of the right of the applicant to raise the application. The Applicant replied on 3rd November advising they wished to proceed by service by advertisement and advised the applicant was the wife of the owner of the property.
4. On 18th November the Tribunal wrote again asking for the following information:-

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

We refer to the above and note what you write. However, as the landlord named on the tenancy agreement and the applicant are only the spouse of the property owner please provide confirmation of the property owner that she had been acting with his consent with regard to the tenancy agreement and the application to the First-tier Tribunal.

If you wish to make an application for Service by Advertisement please consult our website and make an application on the relevant form, providing with it information about the steps you have taken to identify a forwarding address either in form of a Sheriff Officer's report or with a report from a tracing agent. It is the responsibility of the applicant to provide the respondent's details.

Should the above not be provided within 14 days it is highly likely that the application will be rejected."

5. A response was received from the Applicant's representative on 2nd December enclosing the consent of the owner to his wife making this application and enclosing an application for service by advertisement. The Application noted that the tenant had been asked for a forwarding address and had not provided one.
6. the Tribunal wrote again on 29th December 2020 asking:-

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

1. *The legal member with delegated authority from the Chamber President has considered your application for service by advertisement. She is not prepared to accept it at this time, as it does not appear that sufficient efforts to ascertain an address for the former tenant have been made. She advises that sufficient evidence of efforts made would be for example, a report by a tracing agent or sheriff officer's report attempting to find the up-to-date address for the former tenant.*

a. *. Please also advise if the deposit been retained by the landlord, and has it been used towards reducing arrears.*

b. *Please reply to this office with the necessary information by 12 January 2021. If we do not hear from you within this time, the President may decide to reject the application."*

7. No response was received. The Tribunal wrote once again on 22nd January 2021 asking for a response to the previous request and advising
"We refer to our letter to you dated 29th December 2020, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 14 days of this letter or the Tribunal may well reject your application. Please reply to this office with the necessary information by 5 February 2021. If we do not hear from you within this time, the President may decide to reject the application."
8. The Applicant has not replied and has failed to respond to the Tribunal's requests.

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 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.

14. In particular the applicant has failed to provide an address for the Respondents without which the application cannot be served and has failed to show that she has made sufficient efforts to ascertain an address.

15. 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 5 and 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

18th February 2021