



**DECISION AND STATEMENT OF REASONS OF MELANIE BARBOUR, 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

Case reference FTS/HPC/EV/22/2999

Parties

Winton Trust (Applicant)

Miss Emmanuelle Drysdale (Respondent)

Ogilvy Chalmers (Applicant's Representative)

Dorran Bungalow, Winton Estate, Pencaitland, East Lothian, EH34 5AT (House)

1. On 24 August 2022, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules, being an application for eviction of a short assured tenancy.
2. By letters from the Tribunal dated 7 November and 15 December both 2022 and 19 January 2023 the Tribunal requested further information. The applicant has failed to respond to the further information requests, and as at 10 February 2023 the following information was still outstanding:-

Please clarify the position regarding service of the Notice to Quit and section 33 notice. You have submitted two separate notices with the application. In your response to a request for further information you have stated that one combined notice was issued. Please provide the following

1. *The Notice or notices which were served on the Respondent and which are relied on for the purposes of the application.*
 2. *If these were sent by recorded delivery post, a copy of the post office certificate and a track and trace report.*
 3. *If you sent the notices by email, please provide evidence that the Respondent had indicated a willingness to receive formal notices in this way. Previously notices under the 1988 Act could not be served by email. The legislation was amended during the pandemic but you must be able to demonstrate that the tenant has indicated that notices can be served by email.*
 4. *If you have only served one combined notice, please explain why you consider this to be valid, having regard to the case of Beattie v Rogers 2016 Hous LR 107.”*
3. The applicant has failed to respond to the last further information request and the foregoing issues remain outstanding.

DECISION

4. 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."

5. 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 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

6. The Tribunal had requested further information to support this application from the applicant. The applicant has not provided the information requested.
7. The applicant's failure to provide the requested information to support the application gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unable to do so in order to progress this application under rule 66.
8. Accordingly, for this reason the 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.

Melanie Barbour

Legal Member

10/02/2023