



**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 26 Stewarton Road, Glasgow G46 7UZ

Case Reference: FTS/HPC/EV/20/2442

Mr Abdul Shakoor, residing at 20 Brewery Street, Dumfries DG1 2 RP
(“the Applicant”)

Sehrina Ashraf , residing at 26 Stewarton Road, Glasgow G46 7UZ
(Respondent)

1. On 23rd November 2020, an application was received from the applicant. The application was made under Rule 66 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 lease
 - Copy tenancy agreement
 - Copy s33 notice
 - Copy notice to quit
 - Copy s11 notice

3. The Tribunal requested further information from the applicant by letter dated 4th December 2020. 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:

You advise in your application that the AT5 form has been lost and is not available and refer to the terms of the tenancy as possible evidence one was done however it is noted the tenancy agreement was not signed and dated until 9 days after the date of commencement stated in the lease itself, which is 11th June 2019. Can you please provide submissions as to how and when the AT5 form was signed and how it is valid, if the tenancy was not signed until 20th June 2020?

Please reply to this office with the necessary information by 18 December 2020. 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 by the 18th December 2020.
5. The Tribunal wrote again on 14th January 2021 saying “

“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:

We refer to our letter of 4 December 2020 and note that we have not received a reply by the due date of 18 December 2020. Please now address the matters raised in the original letter. Without a response to this the application will be rejected.

Please also address the discrepancy between clause 7 you referred to in the paper apart and clause 2 of the tenancy agreement, which states that it is intended to create an assured short hold tenancy under s 20 of the Housing Act 1988. It would appear that this creates a contradiction in the document itself.

Please reply to this office with the necessary information by 28 January 2021. If we do not hear from you within this time, the President may decide to reject the application.”

6. No response was received and the Tribunal wrote once again on 10th February 2021 reminding the Applicant that he had not replied and stating:-

7.

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

I refer to our previous further information request letters, enclosed for your reference.

We have not received a response.

Please reply to this office with the necessary information by 24 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. 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

Jan Todd
Legal Member
10th March 2021