



**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

Case Reference: FTS/HPC/EV/19/1342

Mr Alan Turnbull, 16/5 Oliver Crescent, Hawick TD9 9BY ("**the Applicant**")

Miss Nicoletta Stephanz 1/1 Hunter Terrace, Hawick TD9 8BD ("**the Respondent**")

1. On 25th April 2019, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules, being an application for eviction in relation to a tenancy. However in clause 5 of the application form the Applicant refers to seeking recovery of possession of the premises and an order for payment of the rent arrears as the Respondent is materially in breach of the tenancy agreement.
2. The following documents were enclosed with the application:-
 - Copy of undated tenancy agreement between the parties with a commencement date of 1st November 2017
 - AT6 notice dated 30th April 2018 and stating date proceedings will not be raised before as 1st May 2018
 - S33 Notice dated 12th February 2019
 - Notice to Quit dated 12th February 2019 requiring the tenant to leave

on 28th April 2019

- Notice to Quit dated 30th April 2018 requiring the tenant to leave on 1st May 2018
- Certificate of service on Notice to Quit and S33 Notice dated 19th February 2019
- Rent statement showing arrears of rent of £4095 due at 2nd April 2019

The Tribunal requested further information from the applicant by letter dated 3rd May. There was no response and the Tribunal wrote again on 21st May 2019 asking for confirmation of the Applicant's title and the same further information requested on 3rd May, namely a signed and dated application form; a further Form E if the application was for eviction and a revised Form F for an application for rent arrears with the correct Rule number (Rule 70) if the application was relating to recovery of rent arrears and advising that if there was no response by 4th June 2019 the President may decide to reject the application. The Applicant has not replied since that date and has failed to respond to this request.

DECISION

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

- 4.

"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.

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 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.
7. 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.
8. In addition the following issues have been identified in the paperwork submitted:-

- a. The AT6 form is out of date as it is dated 30th April 2018 and the application has only been submitted in or around 25th April 2019.
- b. The AT6 form does not give the required 14 days notice
- c. Neither Notice to Quit is valid as the first Notice to Quit refers to a date to remove of 28th April 2019 but this is not an ish date
- d. The Second Notice to Quit is dated 30th April 2018 and refers to a correct ish date namely 1st May 2018 but only gives one days notice to leave when the statutory minimum is 40 days.
- e. Unless there is a valid Notice to Quit which terminates the contractual tenancy, S18(6) of the Housing Scotland Act 1988 requires that a s19 notice cannot be used in a tenancy that is not a statutory assured tenancy unless the full grounds are set out in the lease. The full grounds for termination are not referred to in the lease and therefore the contractual tenancy needs to be terminated before a S19 notice (an AT6 notice) can be used.

9. 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 both 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

Jan Todd
Legal Member
14th June 2019