



**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/CV/22/2204

Parties

Mr Mohamed Mostafa Flat 12, 10 Baltic Place Glasgow G40 3 EG(Applicant)

Mr Emanuel-Victor Rostas, address unknown (Respondent)

1G Busbiehill Place, Kilmarnock, KA1 2LS (Property)

1. On 7th July 2022, an application was received from the applicant. The application was made under Rule 70 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:-
 - Copy lease
 - Rent Statement
 - Bank Statements
3. The Tribunal requested further information from the applicant by letter dated 2nd August 2022 requesting authority to use the unredacted bank statements, confirmation as to the applicant's right title and interest to raise the action and querying the rule number used.

4. The Applicant responded on 4th of August and answered those queries and provided a revised Form F under rule 111. Prior to the response being considered by the Tribunal the applicant wrote again on 19th August advising that the Respondent had left the Property and he did not know his whereabouts and asking if selling the property would affect this action. The Tribunal responded acknowledging this e-mail and advising any action for eviction would have to be made separately.
5. The Tribunal then further considered this application and the revised Form F provided and noted that the Applicant had advised the Respondent was no longer living at the Property and so made a further request for information regarding the Respondent's address which is a mandatory requirement in terms of Rule 111. The Tribunal wrote on 14th September 2022:-

"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:

Thank you for your application for rent arrears, and further information which has answered our previous points. However you have now advised that the tenant has left the Property and this means we can no longer serve the application at the Property address. Do you have a further address for him? If not you may wish to apply to serve the application by advertisement on our website. You will find an application form and information for this on our website at <https://www.housingandpropertychamber.scot/rent/rent-forms-and-guidance>

• Please note that for us to accept an application to serve the papers by advertisement we do require evidence that you have tried to trace the Respondent such as evidence from sheriff officers or a tracing agent. Please reply to this office with the necessary information by 28 September 2022. If we do not hear from you within this time, the President may decide to reject the application."

6. The Applicant requested further time to answer and further time was granted to 14th October 2022.
7. On 15th October 2022 the Applicant sent an e-mail asking for further time :-
"Good afternoon, I'm still struggling to get sheriff officer to do searches about my tenant and I need more time. Thanks."
8. The Tribunal granted further time and sent a further letter on 11th November as follows: "We refer to the email sent by the Tribunal on 27 September 2022 and note your response by email on 15 October. Your request for further time to produce a report from sheriff officers has been granted. Please produce the information by 28 November 2022. Upon receipt of the above information, a final decision can then be taken on whether the application is valid

and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application”

9. There has been no response to the letter of 11th November and a further reminder giving 10 further days was provided on 15th December 2022. No response and no address for the Respondent has been provided.

DECISION

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

11.

"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."

12. 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

13. 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.
14. The applicant has failed to respond to the Tribunal's substantive requests 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.
15. The Applicant has failed to provide the information requested, namely the Respondents address which is required in terms of Rule 111 of the Tribunals rules and is necessary to allow the Tribunal to serve the application and accompanying papers on the Respondent. Alternatively the Applicant can apply to serve by service by advertisement which he was advised of in the Tribunal's letter of 14th September.
16. The Applicant has not responded with the substantive information asked for on 14th September and has not responded to recent reminders so 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.
17. It is open to the Applicant to re raise this application once he has a further address for the Respondent or a response from Sheriff Officers and is able to

apply to serve the application by advertisement.

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
19th January 2023