



**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

134 Dunfermline Road, Crossgates, Fife KY4 8AS

Case Reference: FTS/HPC/PR/21/0223

Jane McAdam 134 Dunfermline Road, Crossgates, Fife ("the Applicant")

Marie Berry, 23D Elgin Road, Cowdenbeath ("Respondent")

1. On 29th January 2021, an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules, being an application for an order for a penalty for failure to pay a tenancy deposit into a tenancy deposit scheme by the Tenant against the Landlord.
2. There were no documents enclosed with the application and the Applicant had not completed parts 7 or 8 of the Application in particular she had not given any details of the order she was seeking.
3. The Tribunal requested further information from the applicant by letter dated 11th February 2021. 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:

1) Please provide a copy of the tenancy agreement.

2) Please complete sections 7(b), 7(cd) and 8 on the application form. You need to confirm the circumstances which give rise to your claim, and to indicate what order you seek from the Tribunal.

3) We note that you have not responded to the request for further information contained in our letter to you of 20th January 2021 in relation to your other application number PR/21/0028, and in particular to confirm which application you wish to proceed with, and which to withdraw. Could you now please respond to that matter.

Please reply to this office with the necessary information by 25 February 2021. 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 ,

5. The Tribunal wrote again on 18th March repeating the request for that further information writing:-

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

1. Please confirm whether the tenancy is ongoing or has finished. If it has ended please confirm the end date of the tenancy. Please note that any application in terms of Rule 103 must be made within three months of the end date of the tenancy.

2. Please provide a copy of the tenancy agreement.

3. Please provide a completed application form, with sections 7(b), 7(c) and 8 completed, to include the following a. in Section 7(b) the basis of your claim in terms of Rule 103, b. in Section 7(c) the order you are seeking from the tribunal (with the maximum permissible being three times the amount of the tenancy deposit) and c. in Section 8, a list of the documents you have lodged to support your application. Please provide copies of any documents listed in Section 8. Please note that in terms of your emails on 4 and 5 February 2021, your duplicate application PR/21/0028 has been withdrawn and the case has been closed.

Please reply to this office with the necessary information by 1 April 2021. If we do not hear from you within this time, the President may decide to reject the application”

6. No response was received.

7. The Tribunal sent a further reminder and request for the information set out in its letters of 11th February and 18th March on 26th April 2021. There has been no response to the letter of 26th April 2021 from the Applicant.

8. 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 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.
14. The Applicant has failed to provide the information requested to determine whether the application can be accepted despite 3 requests being sent.
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 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
26th May 2021