



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDE, 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 Rules")

in connection with

5 Burns Street, High Valleyfields Fife KY12 8RX

**Case Reference: FTS/HPC/PR/18/0770**

**PATRICK CALLAGHAN, 73 ARTHUR STREET, FIFE KY12 0JJ ("the Applicant")**

**KD/SD SERVICES LTD 4C WILLOW DRIVE, AIRDRIE, ML6 8AN ("the Respondents")**

1. On 3 APRIL 2018 an application was received from the applicant. The application was made as an application under Rule 111 of the Rules being an application by virtue of SECTION 71 (1) of the Housing (Scotland) Act 2016 for payment of arrears of rent of £4,000.
2. The Application included as evidence only a text exchange between the Applicant and the Respondent and a brief email explaining the tenancy related to a business address.
3. No documentation was lodged showing the type of tenancy agreement, the parties to any such tenancy agreement and the rent payable under any such tenancy agreement. There is no documentation confirming that the tenancy the matter relates to is a private residential tenancy. There is no documentation identifying the calculation of the rent arrears.

**DECISION**

4. The Legal Member considered the application in terms of Rule 8 of the Chamber 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 Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

#### **Reasons for Decision**

6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; "*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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
7. The issue identified in this action is whether the type of lease/agreement the matter relates to is even within the jurisdiction of the Tribunal.
8. No documentation has been provided to show that the lease is a private residential tenancy or any other type of tenancy for which the Tribunal would have jurisdiction. The information further refers to payment from a business account and the address being a business address. The information in the application refers to a tenancy agreement starting prior to 1 December 2017 and thus that information points to whatever agreement may be in place not being a Private Residential Tenancy.
9. The application does not meet the requirements under Rule 111 as it does not provide evidence to support the application in terms of the jurisdiction of the Tribunal.
10. The application is misconceived and therefore rejected in terms of Rule 8 on the basis that it is frivolous.

#### **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.  
P Henning McFatridge

Petra Hennig McFatridge

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Legal Member  
8 May 2018





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Petra Hennig McFatridge

Legal Member  
8 May 2018

