



DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C., LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")

in connection with

Ref: FTS/HPC/PR/21/1553

34 Tay Avenue, Comrie, Crieff, PH6 2PF ("the Property")

Ms Zandra Black, 34 Tay Avenue, Comrie, Crieff, PH6 2PF ("the Applicant")

Ms Sheila Summers, 4 Pigeon Row, Crieff, PK7 4F ("the Respondent")

DECISION

It was determined by the Legal Member acting under the delegated powers of the Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the Application must be rejected in terms of Rule 8(1).

REASONS

1. On 28 June 2021, an application dated 23 June 2021 was received from the Applicant ("the Application"). The Application was made under Rule 67 of the 2017 Rules, being an application to determine removal expenses where a landlord and tenant cannot agree the amount payable by the landlord to the tenant under Section 22(1) of the 1988 Act.
2. An application made in terms of Rule 67 must-

(a) State-

- (i) *The name, address and registration number (if any) of the landlord;*
- (ii) *The name, address and profession of any representative of the landlord;*
- (iii) *the name and address of the tenant;*
- (iv) *The name, address and profession of any representative of the tenant; and*
- (v) *The details of the tenant's claim for expenses, reasons for disagreement and proposals for settlement; and evidence of the date of the end of the tenancy (if available); and*

(b) *be signed and dated by the landlord or former tenant or a representative of the landlord or tenant.*

3. On 13 July 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

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

1. The application appears to have been submitted using the wrong form and the wrong rule. If the application is to proceed you will require to submit a replacement application on form F and refer to Rule 111.

2. Please explain the legal basis for the application. In terms of the Private Housing Tenancies (Scotland) Act 2016, a tenant is legally entitled to continue to occupy a rented property until an eviction order has been issued by the Tribunal and enforced by a Sheriff Officer. There appears to be no basis for the application to recover expenses.

Please reply to this office with the necessary information by 27 July 2021. If we do not hear from you within this time, the President may decide to reject the application."

4. On 14 July 2021, the Applicant requested advice from the tribunal in the following terms:

"... I can clarify that I cannot claim expenses for my tenant that made me homeless by not removing herself on the 5th January 2021 as she agreed because I did not have an eviction order raised through the Tribunal and served by Sheriff Officers?

Despite the fact she has had notice to leave since August 2020 and did not remove herself until May 22nd 2021.

I just want clarity on item 2 of your letter."

5. On 28 July 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

“Your email of 14 July in response to the tribunal’s further information request of 13 July has been considered.

It is unclear whether you are making a statement or asking the tribunal for advice.

If you are asking the tribunal for advice, the tribunal is unable to provide advice to you as it is a neutral judicial body. If you require advice in relation to your application and the request which has been sent to you for further information you will require to seek this from a solicitor or other housing advisor. It is recommended that you do so prior to replying to this further information request.

Please therefore respond and provide the following, having taken whatever advice you require before doing so:

1. *The application appears to have been submitted using the wrong form and the wrong rule. If the application is to proceed you will require to submit a replacement application on form F and refer to Rule 111, which is an application for civil proceedings in connection with a private residential tenancy.*

2. *Please provide a written paper apart to your application to explain the legal basis for the application. In terms of the Private Housing Tenancies (Scotland) Act 2016, a tenant is legally entitled to continue to occupy a rented property until an eviction order has been issued by the Tribunal and enforced by a Sheriff Officer. There appears to be no basis for the application to recover the expenses you are seeking.*

Please reply to this office with the necessary information by 11 August 2021. If we do not hear from you within this time, the President may decide to reject the application.”

6. The Applicant failed to respond to the request for further information within the stipulated timescale.

7. On 25 August 2021, the Application in terms of Rule 67 was considered by a legal member acting with the delegated power of the Chamber President and a letter was sent to the Applicant as follows:

“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:

- *Please respond to further information request letter issued 28 July 2021, copy attached.*

Please reply to this office with the necessary information by 8 September 2021. If we do not hear from you within this time, the President may decide to reject the application.”

8. The Applicant failed to respond to the request for further information within the stipulated timescale.
9. On 9 September 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 67 of the 2017 Rules.

10. Rule 8 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."

11. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's repeated failures to respond, it was determined that the requirements for making an application under Rule

67 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 67. The Applicant has failed to respond to the tribunal's further information requests. The Applicant has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

12. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

9 September 2021