



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under delegated powers of the Chamber President)

under Rules 8 and 27 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/18/2800

Re: Property at 1/2 1 Leyden Court, Glasgow, G20 9LY (“the Property”)

Parties:

Andrea Mirci (“the Applicant”)
Florence Daz (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 17 October 2018 the Applicant drafted an application under Rule 103 of the Rules, being an “application for order for payment where landlord has not paid the deposit into an approved scheme”, submitting it shortly thereafter.
2. The application was accepted as complete, on the information then available, and a case management discussion was assigned for 21 December 2018. Intimation of the application papers and date of the case management discussion upon the Respondent was carried out by a Sheriff Officer instructed by the Tribunal on 28 November 2018. This was carried out at “X Street”, being the address given by the Applicant for the Respondent in the application. Subsequently, an individual contacted the Tribunal to state that the Respondent did not actually reside at X Street.
3. The case management discussion was cancelled and on 4 December 2018 the Tribunal wrote to the Applicant seeking further details as to the name and address of the landlord that she was pursuing as Respondent. Reference was made to an alternative address that the Applicant mentioned in the application, which I shall refer to as “Y Street”. In her application, the Applicant said that the Respondent was now registered at Y Street on the Landlords’ Registration database, though it was clear that she was raising the application with the Respondent cited as at X Street.
4. On 13 December 2018, the Applicant emailed the Tribunal to say “I cannot provide the name of the person registered at” Y Street.

5. On 9 January 2019, on consideration by the Chamber President, the Tribunal wrote to the Applicant requesting confirmation as to whom rent had been paid under the lease and for the Applicant to provide a trace report on the Respondent's current whereabouts. The Applicant was provided until 23 January 2019 to respond.
6. On 10 January 2019, the Applicant emailed the Tribunal to say that she was concerned about the costs of a trace report. She asked for the application and information from the Landlords' Registration database to be considered again.
7. On 29 January 2019, after consideration by another Legal Member, the Tribunal wrote to the Applicant underlining that it was her obligation to provide a current address for the Respondent and requesting this be provided by 12 February 2019. The letter further stated that the Tribunal noted that the landlord registered on the Landlords' Registration database for the Property as of that date was not the Respondent.
8. On 5 February 2019, the Applicant emailed the Tribunal to confirm that she was not told by the Respondent that she was sub-letting. The Applicant acknowledged that a new person ("Z") was now listed in the Landlords' Registration database for the Property. The Applicant made no material submission to nor made any request of the Tribunal in the email.
9. On 21 February 2019 I considered the application in some detail. I carried out my own investigations, with assistance of the Tribunal clerks, in both the Landlords' Registration database and with Registers of Scotland. I was unable to locate any ownership connection between the Respondent and the Property, or the addresses at X Street or Y Street. The landlord now registered on the Landlords' Registration database remained Z who was said to reside at a foreign address. Further, the Tribunal had received a title search suggesting Z was the owner of the Property (though it is a flatted development and ambiguities with the numbering left me with some doubt whether the current title had been identified) and Z had been the owner during the period of the Applicant's lease. Further, when being registered as proprietor of the Property, Z was said to be resident at Y Street. This was noteworthy but I was conscious that the Applicant had not provided printed evidence that the Landlords' Registration database ever listed the Respondent at c/o Y Street so I was unable to compare matters in full and, in any case, I was of the view that myself and the Tribunal had already undertaken more investigation on the matter than was required of us in considering an application.
10. On my instruction, on 22 February 2019, the Tribunal issued a letter to the Applicant stating, in summary:
 - a. That it was for the Applicant to provide an address for the Respondent and that the application was incomplete without it. For this reason, it

was for her to consider tracing of the Respondent if that was what was required to locate her new address;

- b. That if the Applicant wished to seek service by advertisement, she may request that but in support of such an application evidence would need to be provided as to “the steps taken to ascertain the address of the” Respondent, and that requirement would most likely be satisfied by providing evidence of attempted tracing;
 - c. That if the Applicant wished to amend the application to pursue a different Respondent, if she was now of the view that her true landlord was not the Respondent named in the application, she should make that request for consideration by the Tribunal; but
 - d. That if no response was received by 8 March 2019, the application would be considered again and may be refused.
11. No response has been received from the Applicant further to the letter of 22 February 2019 as of today’s date.
12. The application was considered by me as the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8, as well as considered by myself as Legal member in order to consider Rule 27.

DECISION

13. I considered the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

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 to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. ...

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—*

...

- c) *they have good reason to believe that it would not be appropriate to accept the application;*

...

(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.

14. Rule 27 states:

...

(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to...

(b) co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.

15. Rule 103 requires:

Where a tenant or former tenant makes an application under regulation 9 (First-tier Tribunal orders) of the 2011 Regulations, the application must—

(a) State...

(iii) the name, address and registration number (if any) of the landlord...

16. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;...

(e) avoiding delay, so far as compatible with the proper consideration of the issues.

17. After consideration of the application and supporting papers, I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application, it cannot be accepted.

18. The Applicant has been afforded significant time to provide a current address for the Respondent, or seek service by advertisement or amendment of the Respondent. No response has been received. In consideration of the overriding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters.
19. Furthermore, having requested a new address since 4 December 2018, and having prompted the Applicant to consider obtaining a trace report since 9 January 2019, no progress has been made. The Applicant has not provided a material response on matters for some months and has made no response at all to the letter of 22 February 2019. It is reasonable for me now to regard the applicant as failing to co-operate with the Tribunal, and to conclude that the Tribunal cannot deal with the proceedings justly and fairly as a result. It is reasonable for me to dismiss the application under Rule 27(2)(b).

RIGHT OF APPEAL

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:-

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

J Conn

Legal member/Chair

— 20 March 2019
Date