



**DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)**

**Chamber Ref: FTS/HPC/PR/19/1990**

**Re: Property at 42 Iona Court, Perth, PH1 3AX (“the Property”)**

**Parties:**

Sonya Hay (“the Applicant”)  
Iain Ramsay (“the Respondent”)

**Joel Conn (Legal Member)**

**BACKGROUND**

1. On 13 June 2019 an application was drafted by the Applicant under Rule 103 of the Rules, being an application for order for payment where landlord has not paid the deposit into an approved scheme. The Applicant named the Respondent, and provided details of his representative (a firm of solicitors) but provided no address for the Respondent. The application explained “I no longer have an address for Iain Ramsay as he has now moved.”
2. On 12 July 2019, a different Legal Member reviewed the application and directed a letter be sent to Applicant (which was sent on 17 July 2019) seeking, amongst other matters, details of any attempts to trace the Respondent. The Applicant was provided until 31 July 2019 to respond.
3. The Applicant responded by email on 29 July 2019 stating “the steps I have taken to trace the respondent was to call and text his mobile phone as I have no mailing address for” the Respondent. She also provided the mobile phone number. She concluded with “I... an happy for you to go ahead with service by advertisement” (all *sic*).
4. This was reviewed by a second Legal Member on 8 August 2019 who directed the Tribunal to write to the Applicant with details of where to find the form for seeking Service by Advertisement. The Applicant was emailed on 13 August 2019 with a link to the Tribunal’s website and asked to respond by 27 August 2019. The Applicant made no further response.
5. On 16 October 2019, I reviewed matters as the Legal Member then sitting as an In-House Convenor. I was concerned that the Applicant had not responded to the last letter but I further noted that the Tribunal had itself conducted a search of the Landlords’ Registration database and identified an address local

to the Property at which the Respondent had listed as a contact address. (This was a different address to that the Respondent provided for himself in the lease, so potentially a newer address.) In the circumstances, leaving aside the lack of submission of the proper forms, I was not satisfied that – absent any attempt by the Applicant to consider the Respondent’s address as listed on the Landlords’ Registration database - the Applicant could be said to have fulfilled the requirements of Rule 5(5) regarding Service by Advertisement (“Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party”). I directed the Tribunal to write to the Applicant once more with a detailed letter which, amongst other points:

- a. Provided the address from the Landlords’ Registration database and invited the Applicant to consider whether she wished to use that address in her application;
- b. Stated the requirements of Rule 5(5) to provide details of tracing steps if Service by Advertisement was sought; and
- c. Restated the need to complete the correct form to apply for Service by Advertisement.

The Applicant was asked to respond by 2 October 2019.

6. On 26 September 2019, the Applicant emailed the Tribunal to say: “We knew he [the Respondent] lived someone in the area just not the address. We contacted him through the only way we could his mobile number. I have sent everything I have to you already. We had no access to any other way to communicated with him other than the texts and calls we had sent.” (all *sic*)
7. The application was reconsidered today by myself as Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

## **DECISION**

8. I considered that 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.*

*(4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this in the application*

*and complete a request for service by advertisement in accordance with paragraph (5).*

*(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.*

9. Rule 103 (as amended) governing the application provides:

*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—*

*(i) the name and address of the tenant or former tenant;*

*(ii) the name, address and profession of any representative of the tenant or former tenant; and*

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

*(b) be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;*

*(c) evidence of the date of the end of the tenancy (if available); and*

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

10. The Tribunal's Rules in general are to be considered in line with Rule 2: the "overriding objective":

*(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.*

11. After consideration of the application and supporting papers, I considered that the application fails to provide the name and address of the landlord in terms of Rule 103(a)(iii) or alternatively seek Service by Advertisement in proper form. The application is thus incomplete and I have good reason not to accept the application in terms of Rule 8(1)(c) of the Rules.

#### **REASONS FOR THE DECISION**

12. It is not for the Tribunal to trace parties. Nonetheless, Legal Members frequently encounter applications where the address of a Respondent is not known and the Applicant looks to the Tribunal to find an address or consider the application without an address. The Tribunal's rules and procedure on Service by Advertisement are not complex but require the Tribunal to be satisfied that there has been an attempt to trace, before falling back on a request to serve in this fashion. The requirement to trace is not arduous. Leaving aside investigations that a party can undertake themselves, there are many tracing agents and investigators available in the Scottish market. This notwithstanding, even when the Tribunal recommends to parties that they seek a tracing agent, this is often not done. Cost is sometimes cited as an issue but often the point is simply not engaged with by the party.

13. In this case the Applicant falls into the latter category but she is doing so in the face of the Tribunal going further than necessary in attempting to assist her. The Tribunal's own file preparation located, on a free, publically-available database, an alternative address for the Respondent. Without any requirement within the Rules to provide this to the Applicant, the Tribunal did so and prompted her to investigate further. (It is not known whether the Respondent does indeed reside at the address listed on the Landlords' Registration database but as the address located is around 1 mile from the Applicant's address, it does not seem unreasonable that she could make some meagre investigations herself into whether it is accurate, such as consulting the local electoral register.)

14. Alternatively, the Applicant need only have responded to the Tribunal to adopt that address as the one she wished to use in the application, given that the Respondent holds himself out to be at this address for the purposes of statutory

registration as a landlord. She clearly does not do so and so there is no address provided for the Respondent, making the application incomplete in terms of Rule 103(a)(iii). Further, despite two letters, she has not provided a formal application for Service by Advertisement as an alternative. 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.

15. The Applicant's failure to respond to the initial simple request to complete the forms for Service by Advertisement (twice), and to consider the new address, make refusal appropriate in my view when considering the overriding objective. Parties should not expect that applications will be kept open indefinitely or that they shall be repeatedly chased for a response to points that they have failed to answer on first request. It is for applicants to ensure that they respond timeously and fully to correspondence from the Tribunal, as well as submit well-founded and specified applications at the outset. The deadlines set by the Tribunal in correspondence can (and in many cases should) be strictly adhered to so as to avoid delay, all as in-keeping with the overriding objective.

### **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.**

**Joel Conn**

Legal Member/Chair

16 October 2019

Date

