



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/RE/21/0864

Re: 3e Thomson Avenue, Johnstone, PA5 8SS ("the Property")

Parties:

Kevin and Anita McElhinney, 5 Moray Place, Linwood, PA3 3QX, ("the Applicant")

Mark McKenna, 3e Thomson Avenue, Johnstone, PA5 8SS ("the Respondent")

Tribunal Member: Martin J. McAllister (Legal Member)

The Tribunal rejects the application by the applicant dated 23rd March 2022 which is an application under Section 28 A(1) of the Housing (Scotland) Act 2006 and Rule 55 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Background

1. The Applicant was asked on 25th March 2022 to provide further information to enable the application to be considered. The request for information was in terms of Rule 5 (3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
2. The information requested was evidence of notification to the Respondent of the Applicant's need to have access to the Property together with evidence of delivery of such notification. The Applicant was also asked for a copy of the lease or tenancy agreement.

3. The Applicant was advised that such information required to be provided by 8th April 2022, failing which the application may be rejected.

Reasons

4. The Legal Member considered the application in terms of Rule 5 and Rule 55 of the Chamber Procedural Rules. Rule 5 provides: - (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 lodgment 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 requirement manner for lodgment. “
5. The Legal Member noted that the Applicant had submitted details of the tenancy and that, in the circumstances, the absence of a copy of the tenancy agreement was not significant. Proof of notification of the landlord’s intention to exercise the right of access was significant.
6. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule**

55 and Section 28 A (4) of the 2006 Act.

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

Martin J. McAllister, Legal Member, 10th May 2022