

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

50 Westend Drive, Bellshill, ML4 3AS (the property)

Case Reference: FTS/HPC/TE/20/1356

Jessica Walker ("the applicant")

David Gemmell ("the respondent")

Background:

1. On 21 May 2020 the applicant lodged an application in terms of Rule 107 of the Procedural Rules with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal).
2. In part 5 c the applicant stated that the tenancy commenced on 4 July 2015
3. The Tribunal advised the applicant by letters of 6 July 2020, 28 July 2020 and 7 September 2020 that in order to make an application under Rule 107 the tenancy must be a Private Residential Tenancy and requested further information from the applicant. The latest letter from the Tribunal on 7 September 2020 stated: *"You have not responded to the tribunal's request dated 6 July 2020 to provide further required information by 20 July 2020. Before a decision can be made, we need you to provide us with the following: 1. You have stated in the Application that the tenancy started in 2015. It therefore appears to be an assured tenancy in terms of the Housing (Scotland) Act 1988. Rule 107 relates to private residential tenancies which started on or after 1 December 2017. Please confirm the start date of the tenancy and provide a copy of any tenancy agreement provided at any time. Please clarify the basis upon which you submit that the Tribunal can consider the application. 2. An application in terms of Rule 107 can only be made as part of an application under Rule 105. You have not submitted an application in terms of Rule 105. If your tenancy started after 1 December 2017, please submit an application*

in terms of Rule 105 if you wish to proceed with this application under Rule 107. 3. Please provide a copy of the Notice to Landlord of intention to apply to the First-tier Tribunal together with evidence of when and how this was given to the Landlord, as required by Rule 107."The information was requested by 21 September 2020.

4. The applicant did not have the courtesy to either reply to the Tribunal with the information requested or to withdraw the application.
5. No answer was received and no further documentation submitted.

DECISION

1. I considered the application in terms of Rule 8 of the 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."

2. After consideration of the application, the attachments and correspondence from the

Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

Relevant Legislation

Rule 107 of the Procedural Rules: Application for payment order where landlord has failed to provide information

107. Where the tenant makes an application under section 16(1) (to sanction failure to provide information) of the 2016 Act, the application must—

(a)state—

(i)the name and address of the tenant;

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

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

(iv)that the landlord has failed to provide the tenant with (either or both)—

(aa)a document setting out all the terms of the tenancy required under section 10(15);

(bb)information required under section 11,

of the 2016 Act;

(b)be accompanied by a copy of the notice given to the landlord under section 16(3)(c) of the 2016 Act; and

(c)be signed and dated by the tenant or a representative of the tenant.

S 16 of the Private Housing (Tenancies) (Scotland) Act 2016: First-tier Tribunal's power to sanction failure to provide information

(1)On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where—

(a)the landlord has failed to perform a duty arising by virtue of section 10 or 11 to provide the tenant with information,

(b)at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and

(c)the landlord does not have a reasonable excuse for failing to perform the duty.

REASONS FOR DECISION

1. The Tribunal can only accept an application under rule 107 of the Procedural Rules if the application is made in respect of a Private Residential Tenancy as stated in s 16 (1) of the 2016 Act and meets the lodging requirements of Rule 107 of the Procedural Rules.
2. In terms of the information received from the applicant the tenancy commenced on 4 July 2015 and thus would be an assured tenancy under the legislation applicable at that

time, namely the Housing (Scotland) Act 1988.

3. In terms of paragraph 21 (d) of Schedule 1 of the 2016 Act a tenancy cannot be a private residential tenancy if it is an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.
4. In terms of the information provided by the applicant the tenancy was entered into on 4 July 2015 and thus was already in place when the 2016 Act came into force on 1 December 2017.
5. Furthermore the applicant, despite several letters requesting said information, did not provide a notice to the landlord as required in terms of S 16 (3) of the 2016 Act and Rule 107 (b) of the Procedural Rules.
6. The Tribunal advised the applicant on several occasions that she either has to provide information to support the application and the relevant documents in terms of Rule 107 of the Procedural Rules or the application may have to be rejected. The applicant did not send a reply to these requests.
7. Based on the available information the application does not conform to the requirements for an application under S 16 of the 2016 Act and Rule 107 of the Procedural Rules. It would not be appropriate for the Tribunal to accept an application that does not meet the lodging requirements. The application is therefore rejected.

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.H McF

Petra Hennig McFatridge

Legal Member

6 October 2020