

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PAMELA WOODMAN, LEGAL MEMBER  
OF THE FIRST-TIER TRIBUNAL HOUSING AND PROPERTY CHAMBER (“the Tribunal”)  
UNDER THE 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”)

in connection with

New Cottage, Millhole, Newtyle, Blairgowrie, Angus PH12 8UP (“the Property”)

**Case Reference: FTS/HPC/TE/18/1164**

**Mr Stuart Edwards, New Cottage, Millhole, Newtyle, Blairgowrie, Angus PH12 8UP  
 (“the Applicant”)**

**Mr Alex Neillie, Economy Car & Van Hire, East Perrie Street, Dundee, DD2 2RD  
 (“the Respondent”)**

**BACKGROUND**

1. On 21 May 2018, an application (including an application form D dated 9 May 2018) was received from the Applicant. The application was an “application to draw up Terms and make payment order” and so was made under rules 105 (*Application to draw up terms of tenancy*) and 107 (*Application for payment order where landlord has failed to provide information*) of the Rules. Various documents accompanied the application form.

**DECISION**

2. The Legal Member considered the application in terms of rules 5 and 8 of the Rules. These Rules provide:

***“Requirements for making an application***

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) *The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.”*

### **“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.”*
3. **After consideration of the application form D and the attachments thereto provided by the Applicant, the Legal Member considered that the application should be rejected on the basis that there is good reason to believe that it would not be appropriate to accept the application, as is provided for in rule 8(1)(c) of the Rules.**

### **REASONS FOR DECISION**

4. Rule 105 of the Rules (*Application to draw up terms of tenancy*) applies where a tenant makes an application under section 14(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“**the 2016 Act**”). One of the mandatory requirements for lodging (and acceptance) of an application under that rule is that the application must be accompanied by “a copy of the notification to the landlord as required under section 14(3) of the 2016 Act”.
5. Rule 107 of the Rules (*Application for payment order where landlord has failed to provide information*) applies where a tenant makes an application under section 16(1) of the 2016 Act. One of the mandatory requirements for lodging (and acceptance) of an application under that rule is that the application must be accompanied by “a copy of the notice given to the landlord under section 16(3)(c) of the 2016 Act”.
6. Accordingly, sections 14 and 16 of the 2016 Act need to be considered.
7. Section 14(1) of the 2016 Act provides as follows:
- The tenant under a private residential tenancy may (subject to subsection (3)) apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the landlord—*
- (a) *has a duty under section 10 to provide the tenant with a document which sets out all of the terms of the tenancy, and*
  - (b) *the landlord has not provided that document to the tenant.*
8. Section 14(3) of the 2016 Act (which is referred to in section 14(1) of the 2016 Act) provides as follows:
- The tenant may not make an application under subsection (1) unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.*

9. Sections 16(1) to 16(3) of the 2016 Act provide as follows:
- (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.*
  - (2) *An order under this subsection is one requiring the landlord to pay the person who made the application an amount not exceeding—*
    - (a) *three months' rent, if the order is in respect of a failure by the landlord to perform—*
      - (i) *a duty arising by virtue of section 10, or*
      - (ii) *one or more duties arising by virtue of section 11,*
    - (b) *six months' rent, if the order is in respect of a failure by the landlord to perform—*
      - (i) *a duty arising by virtue of section 10, and*
      - (ii) *one or more duties arising by virtue of section 11.*
  - (3) *An application under subsection (1)—*
    - (a) *may be made only during the course of the tenancy in question,*
    - (b) *where the application relates to a failure to perform a duty arising by virtue of section 10, may be made only as part of an application under section 14(1), and*
    - (c) *may not be made unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.*
10. Therefore, section 17 of the 2016 Act (which is referred to in sections 14(3) and 16(3)(c) of the 2016 Act) also requires to be considered. Section 17 of the 2016 Act provides as follows:
- (1) *For the purposes of sections 14(3) and 16(3)(c), a notice period—*
    - (a) *begins on the later of—*
      - (i) *the day that the landlord receives notice from the tenant of the tenant's intention to make the application in question, or*
      - (ii) *the day after the deadline by which the landlord should have performed the duty to which the application in question relates, and*
    - (b) *expires on the day falling 28 days after it begins.*

- (2) *Where the application in question relates to a failure by the landlord to perform more than one duty, the reference to the duty in subsection (1)(a)(ii) is to be read as a reference to the duty with the latest deadline for performance.*
- (3) *A notice of a tenant's intention to make an application under section 14(1) or 16(1) must fulfil any requirements prescribed by the Scottish Ministers in regulations.*
11. The Scottish Ministers made The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (“**Prescribed Form Regulations**”) in exercise of the powers conferred by section 17(3) and various other sections of the 2016 Act. Regulation 2 of the Prescribed Form Regulations provides as follows:
- (1) *A notice under section 14(3) (application to First-tier Tribunal to draw up terms) of the [2016] Act of the tenant's intention to make an application to the First-tier Tribunal under section 14(1) of the Act must be in the form set out in schedule 1.*
- (2) *A notice under section 16(3)(c) (First-tier Tribunal's power to sanction failure to provide information) of the [2016] Act of the tenant's intention to make an application to the First-tier Tribunal under section 16(1) of the Act must be in the form set out in schedule 1.*
12. The Applicant purported to suggest that the letter dated 17 May 2018 and/or the (undated) text message print outs provided by the Applicant accompanying his application form constituted notice under section 16(3)(c) of the 2016 Act. However, neither the said letter nor the said text messages was/were in the prescribed form set out in schedule 1 to the Prescribed Form Regulations. Accordingly, neither met the requirements of section 17(3) of the 2016 Act and so neither the required notification in terms of section 14(3) of the 2016 Act nor the required notice in terms of section 16(3)(c) of the 2016 Act had been provided to the landlord (based on the documentation submitted to the Tribunal accompanying the application form).
13. As a result, the Applicant had not met the mandatory requirements for lodging (and acceptance) of an application in terms of rules 5, 105 and/or 107 of the Rules. Therefore, the application could not be accepted by the Tribunal.
14. Furthermore, section 17(1) of the 2016 Act provides that a period of 28 days' notice requires to be provided by the tenant to the landlord and, in this case, such period of notice has not been provided, the application form being dated 9 May 2018 and being received by the Tribunal on 21 May 2018 and the letter to the landlord being dated 17 May 2018. Accordingly, even if the letter dated 17 May 2018 and/or the (undated) text messages had been in the form prescribed by the Prescribed Form Regulations (which they were not), the requisite period of notice in terms of section 17(1) of the 2016 Act had not been provided to the landlord and so it is not competent for the tenant to make an application at this stage.
15. For the avoidance of any doubt, whilst the application with case reference FTS/HPC/TE/18/1164 has not been accepted by the Tribunal, this does not preclude the Applicant from submitting another application in due course in terms of rules 105 and/or 107 of the Rules, provided that the relevant provisions and mandatory requirements/conditions (including, but not limited to, those set out in section 16(3) of the 2016 Act in the case of an application under rule 107 of the Rules) have been met and any requisite notice period(s) has/have expired.

### **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 the delegated powers of the Chamber President, 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 Woodman

Pamela Woodman  
Legal Member  
5 June 2018

