



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,
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 Rules")**

in connection with

12 Parkend Road, Saltcoats, KA21 5JR ("the Property")

Case Reference: FTS/HPC/RP/21/2323

**Mark and Anne Marie O'Rork, 12 Parkend Road, Saltcoats, KA21 5JR ("the
Tenant")**

**Allan Miller c/o Move 2 Property Services, 25 Hamilton Street, Saltcoats, ("the
Landlord")**

1. The Tenant submitted an application dated 22nd September 2021 to the Tribunal in terms of Section 22 (1) of the Housing (Scotland) Act. On various occasions, the Tribunal issued a request for further information and documents to the Tenant. The Tenant was asked to provide evidence that the Homeowner had notified the Landlord of the complaints referred to in the application and a copy of any response. On 18th October 2021, the Tenant requested that matters be paused to allow the Landlord an opportunity to replace windows. On 12th November 2021, the Tenant intimated to the Tribunal that the works to windows were not proceeding and that he therefore wanted consideration of the application to proceed. On 15th November 2021, the Tribunal once more asked the Tenant to provide evidence that the Homeowner had notified the Landlord of the complaints referred to in the application and a copy of any response. No response has been received to any of the letters or emails requesting evidence that the Landlord had received notification from the Tenant

with regard to the repairs which were considered necessary.

DECISION

2. The Legal Member considered the application in terms of Rule 5 and Rule 43 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. “

3. **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 48 and Section 22(3) of the 2006 Act.**

REASONS FOR DECISION

4. The Tenant’s application is in terms of Section 22(3) of the 2006 Act and Rule 48. Section 22(3) states that no application may be made unless the person making the application has notified the landlord that work requires to be carried

out for the purpose of complying the duty to maintain the property in terms of Section 14 (1) (b) of the 2006 Act. Rule 48 (b) states that an application must be accompanied by the notification referred to.

5. The Tenant has failed to provide the information and documents required by Rule 48 of the Rules and Section 22(3) of the 2006 Act. The Tenant has also failed to provide this information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

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.

M J McAllister

Martin J. McAllister, Legal Member
10th January 2022