



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

Broomfield Farm Cottage, West End, Star, Fife, KY7 6JZ

Case Reference: FTS/HPC/CV/21/0122

Balbirnie Home Farms, Pitillock Farm, Freuchie, Coupar ("the Applicant")

**Louis Delmaestro residing at Broomfield Farm Cottage, West End, Star, Fife,
KY7 6JZ**

(Respondent)

1. On 19th January 2021, an application was received from the applicant. The application was made under Rule 111 of the Procedural Rules, being an application for an order for payment of rent arrears by the Tenant.
2. The following documents were enclosed with the application:-
 - Copy lease
 - Rent Statement
3. The Tribunal requested further information from the applicant by letter dated 29th January 2021. The Tribunal asked for the following information:-
Before a decision can be made, we need you to provide us with the following:

1. Please confirm that the application is made against both Mr Delmaestro and Ms Swan 2. Please enter the amount for the order you are seeking in section 5 c of the application. Should this have to be amended during the course of the application please see our website and in particular Rules 13-14A of the Rules of Procedure which advise how such an amendment can be sought. 3. In order to give the other parties fair notice of the application please enter in part 5 b of the application information about the period to which this application relates, stating specifically which arrears were covered by the previous order and which rent arrears are covered by this application. Please submit the replacement pages or amendments in a suitable and clear format Please reply to this office with the necessary information by 12 February 2021. If we do not hear from you within this time, the President may decide to reject the application.

4. No response was received from the Applicant
5. The Tribunal wrote again on 11th March repeating the request for that further information and asking for a response by 25th March failing which the Tribunal indicated the application may be rejected.
6. No response was received.
7. A response was received from the Applicant's representative on 11th March 2021 the same date as the further letter was sent advising
"We have managed to negotiate staged repayment of the rent arrears and ongoing rental payments. Can we therefore stop or suspend any further action in the hope the tenants adhere to the agreement. We have not contacted you previously regarding this as we wanted to see if they did indeed make a start on this scheduled structure."
8. The Tribunal responded to this e-mail on 26th April advising the Applicant that the Tribunal did not have a method of suspending the application and
"The Tribunal does not have a procedure for cases to be placed on hold before they are accepted. If you do not wish to proceed at the present time you will require to withdraw the application and re-submit it when you wish the application to proceed. Please note that you have still to provide a response to the request for further information if the application is proceeding. Please confirm if you wish to withdraw the application. Please reply to this office with the necessary information by 10 May 2021. If we do not hear from you within this time, the President may decide to reject the application. "

9. There has been no response to the letter of 26th April 2021 from the Applicant or their representative.

DECISION

10. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

11.

"Rejection of application

Rule 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 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.

(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."

12. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

13. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the

meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-
"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

14. The applicant has failed to respond to the Tribunal's substantive requests for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
15. The Applicant was advised that the Tribunal does not have the ability to suspend applications while the Applicant determines if payments are being made. The Applicant has failed to provide the information requested to determine whether the application can be accepted despite 3 requests being sent.
16. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

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.

Jan Todd

Jan Todd
Legal Member
26th May 2021