

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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

8H Hume Street, Montrose, DD10 8JD

Case Reference: FTS/HPC/CV/19/2665

Mr Douglas Dick-Reid ("the Applicant")

Mr Scott Learmouth ("the Respondent")

On 26th August 2019 the Applicant lodged an application under Rule 111 for payment of rent arrears. The Applicant also raised three other actions against the same Respondent in respect of rent arrears for different properties. By letter dated 27th August 2019 the Applicant was asked to provide a copy of the Tenancy Agreement to allow the Application to be accepted. On 19th September 2019 the Tribunal sent a further letter to the Applicant asking for Tenancy Agreements for each of the properties. The Tribunal also confirmed to the Applicant the definition of a Private Residential Tenancy in terms of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016. On 2nd October 2019 the Applicant sent an email to the Tribunal asking how he should proceed given that the respondent was not living in all of the properties. The tribunal responded on 2nd October 2019 stating that it could not give legal advice. Nothing further has been

received from the Applicant.

DECISION

I considered the application in terms of Rule 8 of the Chamber 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 and supporting documentation, I consider that the application should be rejected on the basis that it is not appropriate to accept it in terms of Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 states:

1 Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

The Applicant has not provided any information which establishes that there is a tenancy in terms of section 1 of the said Act. He has therefore not established that the Tribunal has jurisdiction to deal with the matter, and the action is bound to fail.

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.

Miss Alison Kelly
Legal Member
28th October 2019