

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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

122 Hillfoot Road, Airdrie, North Lanarkshire, ML6 9PJ

Case Reference: FTS/HPC/CV/18/3085

Mr Graeme Paton, 58 Blair Road, Coatbridge, North Lanarkshire, ML5 1NJ ("the applicant")

Mrs Joyce Bennet, (Applicant Provided Work Address) ("the respondent")

On 14 November 2018, an application was received from the applicant. The application was made under Rule 70 of the Procedural Rules being an application for civil proceedings in relation to an assured tenancy under the 1988 Act. Along with the application form the applicant lodged a copy of texts between himself and the respondent and copy bank statements.

By letter dated 15 November 2018 the Tribunal advised the applicant that details of the bank statements would be circulated to all parties and asked the applicant whether he was happy with this or whether he would wish to redact and resubmit the

documentation. He was also asked to provide the home address for the respondent as the application form stated the respondent's work address. The Tribunal asked to receive a response to their letter by 22 November 2018 otherwise the application would not be accepted.

The applicant emailed the Tribunal on 23 November 2018 advising that he was happy with the bank statements being used as lodged and asking for some further time to obtain the respondent's home address.

A letter was emailed to the applicant on 29 November 2018 affording him an extension until 13 December 2018 to provide the respondent's home address.

In the absence of a response, the Tribunal wrote again to the applicant on 11 January 2019 asking for a response by 25 January 2019. As no response was received, the Tribunal wrote to the applicant again on 15 February 2019 informing the applicant of a change to the Tribunal Rules which meant service could be effected by way of advertisement in some circumstances where a respondent's address was unknown. The applicant was asked to respond by 1 March 2019. As no response was received, a further letter was written from the Tribunal to the respondent on 19 March 2019 asking for a response by 2 April 2019. No response has been received.

DECISION

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."

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 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

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.

The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. 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's representative is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

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.

A. Mathie

Anne Mathie
Legal Member
26 April 2019