



Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/CV/22/3248

Re: 79 Hutcheon Low Drive, Aberdeen, AB21 9WJ ("the Property")

Parties:

Brenda Ingram ("the Applicant")

Denise Thomas ("the Respondent")

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 111 on 6th September 2022 with an application for Service by Advertisement upon the Respondent.
2. The application was considered by a legal member of the Tribunal and by letter dated 11th October 2022, the following information was requested from the Applicant:
 1. Please provide an amended application form with full details of the order which is sought. It must include the total sum being claimed and a breakdown of this in relation to rent, cleaning and repairs.
 2. Please provide a rent statement showing the rent due, the payments made and the running total outstanding at the end of the tenancy.

3. Please provide your current address. A care of address cannot be used.
4. Please provide vouching of the sums incurred in relation to cleaning and damage.
5. In connection with the application for service by advertisement, please provide a trace report from a tracing agent or Sheriff Officer.

Please reply to this office with the necessary information by 25 October 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 17th October 2022, the Applicant responded as follows:
 1. *I believe I already send this with receipts from Grampian Accommodation Agency (property management company).*
 2. *I believe I already send this with a statement from Grampian Accommodation Agency (property management company).*
 3. *Apartment 1108, building C2, Pulse Boulevard, Dubai South, Dubai, UAE*
 4. *Is this the same as the breakdown as above with receipts from GAA?*
 5. *Can you clarify what this is and how I can provide this?*

4. By email dated 17th October 2022, the case worker responded as follows:

Please be advised that Administration staff are unable to provide any advice on how to answer the points raised in the further information request letter. The contents of the case thus far do not seem to contain the information requested in the prescribed format. Furthermore, enquiries can be made with Sheriff Officers in relation to their services. We are unable to recommend a specific agency as we are an impartial body. If you require further assistance in this matter, you may wish to seek independent legal advice.

5. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant by letter dated 21st November 2022 as follows:

Before a decision can be made, we need you to provide us with the following:

1. You have not provided a specific amount as the amount you are seeking in the application. This has to be entered into part 5b of the

application form. Neither the form nor the additional documents currently provide this. Without this the application is not valid.

2. You have not provided a rent statement in the format requested. You have provided several letters to the Respondent regarding arrears, however, please now provide a rent statement.
3. Whilst you have provided some photographs, you have not provided any invoices or quotes regarding cleaning or repairs. If you wish to claim such sums you have to state what you are claiming, how this is calculated, provide evidence of the cost and explain how you have taken into account normal wear and tear in that calculation.
4. In order to accept a Service by Advertisement application the Tribunal requires evidence of you having taken appropriate steps to identify the new address of the Respondent. This is done by providing a negative trace report from Sheriff Officers or a tracing agent. You will have to contact either Sheriff Officers or a tracing agent to provide such a report and then submit this to the Tribunal together with the application for Service by Advertisement. Obviously, if the Sheriff Officers or tracing agent actually establish a new address for the Respondent then you have to amend your application to show the up to date address for the Respondent and a Service by Advertisement application is not required.

Please note that it is the responsibility of the Applicant to provide a valid and complete application. At present the application does not meet the lodging requirements.

Unless the Tribunal receives the information stated above the application would have to be rejected.

Please reply to this office with the necessary information by 5 December 2022. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

6. The application was considered by a legal member of the Tribunal and by email dated 22nd December 2022, a further opportunity to provide the information requested was given, with a response requested within 14 days, failing which, the application may be rejected. No response was received.
7. The application was considered by a legal member on 31st January 2023.

Reasons for Decision

8. The Tribunal 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;·

(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

9. '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"*.
10. The application cannot proceed without (i) evidence to support the application as required by Rule 111 of the Procedural Rules; (ii) details of the specific sum sought; and (iii) an address for the Respondent or a proper application for Service by Advertisement.
11. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Helen Forbes

Legal Member/Chair

31st January 2023
Date