



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

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

in connection with

Case Number FTS/HPC/23/EV/1100

Parties

Mr Derek McConechy (Applicant)

Ms Leonora Mitchell-Keay (Respondent)

Bogside Cottage, Monkton, KA9 2SD (House)

BACKGROUND

1. On 3rd April 2023 the Applicant lodged an application for eviction of the Respondent from the property at ('the property'). The application was made in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The ground of eviction was stated to be that a family member required the house because they had to leave their home due to an infestation.
2. The applicant advised there was no tenancy agreement and lodged only an

AT6 form with an explanation that the Respondent had moved in with a late family member who had been living there and continued to pay some rent..

3. The Tribunal administration on the instructions of a legal member requested further information from the Applicants on 2nd May 2023 as follows: *“I refer to your recent application which was referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:*

Please clarify the Respondent’s occupancy of the property. Did she move into the property as a lodger or did she reside with the former tenant as her spouse or civil partner. If it was the latter she may have succeeded to the tenancy. You may also have created a tenancy if you have permitted her to remain the property and pay rent to you after the death of the former tenant. Please provide the start date of the original tenancy and as much additional information as you can. You should also consider taking legal advice to check whether the Tribunal has jurisdiction to deal with this matter. If the respondent succeeded to the tenancy, it may be an assured tenancy under the Housing (Scotland) Act 1988. However, if a new tenancy came into existence in October 2022 it may be a private residential tenancy under the 2016 Act which requires a different process.

If it is an assured tenancy, please provide the following

1. A notice to quit with evidence of service on the Respondent 2. A valid AT6 notice with evidence of service. The document lodged does not appear to be valid as it refers to an eviction ground for tenancies which started before 2 January 1989. Please note that it is not a valid ground under the 1988 Act that a family member intends to live in the property. If it is a private residential tenancy, please provide the following

2 1. A valid Notice to leave which has been served on the respondent with evidence of service. For either type of tenancy, please also provide 1. Evidence in support of the eviction ground 2. A section 11 notice with evidence that it has been sent to the Local Authority.

Please reply to this office with the necessary information by 16 May 2023. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number. “

4. There was no response to this request.
5. The Tribunal wrote again by e-mail on 15th June 2023 asking for the same information as stated above and asking for a response by 29th June 2023.
6. No response has been received from the Applicant to either request.
7. No other correspondence has been received from the Applicant and there has been no request for further time.

DECISION

8. I considered the application in terms of Rule 5 and Rule 8 of the Procedural Rules.

9. Rule 5 provides:-

“Requirements for making an application:

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 to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.”

10. Rule 8 provides:

“8. Rejection of application

(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.”

11. 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.

12. The Applicant may wish to take legal advice regarding the situation with this Property.

13. 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 A Todd
Legal Member
3rd August 2023