

**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDE, 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

Flat 2/5 Canada Court, 81 Miller Street, Glasgow G1 1EB

Case Reference: FTS/HPC/CV/18/0328

BRIAN ARMSTRONG, G/2, 91 AYR ROAD, NEWTON MAERNS, GLASGOW G77 6QR ("the Applicant")

DARREN CLARK, FORMERLY OF FLAT 2/5 CANADA COURT, 81 MILLER STREET, GLASGOW G1 1EB ("the Respondents")

1. On 8 February 2018 an application was received from the Applicant. The application was made as an application under Rule 111 of the Rules being an application by virtue of SECTION 71 (1) of the Housing (Scotland) Act 2016 for payment of arrears of rent of £1300.
2. The Application included as evidence only bank statements and an exchange between the Applicant and the Respondent by email.
3. On request of the Tribunal the Applicant then lodged a copy of the tenancy agreement and was asked whether the matter should proceed as a Rule 70 application as the tenancy commenced on 3 October 2017, which is a date prior to 1 December 2017 which is the date when Private Residential Tenancies came into being.
4. The Applicant repeatedly stated that the Respondent had not provided a forwarding address and that the address stated in the application is the Respondent's work address. The documentation clearly shows that the Respondent does not wish for correspondence to be sent to his work address.
5. By further letters of 26 April 2018 and 21 May 2018 the Applicant was again advised that a proper address for the Respondent was required in order to proceed with the application.
6. Rule 70 (a) (ii) of the Rules of Procedure requires as part of the Application "the name and address of any other party".
7. Rule 6 of the Rules of Procedure requires service by the Tribunal of any formal communication to be sent to "the proper address" of that party.
8. The Applicant had been advised that the Tribunal cannot accept as a proper address a work address, which is clearly not where the person resides. He considers that the Tribunal should telephone the Respondent and at his place of work and ask if he wishes documents to be delivered there.

DECISION

9. The Legal Member 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.”

- 10. After consideration of the application the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

11. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *“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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
12. The issue identified in this action is whether the requirements of an application in Rule 70 have been complied with.
13. It is not a function of the Tribunal to establish the address of a tenant who has moved out. The Tribunal Rule requires this information to be provided by the Applicant.
14. The application does not meet the requirements under Rule 70 as it does not provide the required address.
15. The application is misconceived and therefore rejected in terms of Rule 8 on the basis that it is frivolous.

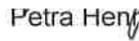
What you should do now

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.

Petra Hennig McFatridge

 Petra Hennig McFatridge

Legal Member
6 June 2018

