



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under delegated powers of the Chamber President)

under Rules 8 and 27 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/18/2204

Re: Property at 58 Brodie Avenue, Dumfries (“the Property”)

Parties:

Mervyn Turkington (“the Applicant”)

Lee Page (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 21 August 2018 the Applicant drafted an application under Rule 111 of the Rules, being an “application for civil proceedings in relation to a private residential tenancy”, submitting it shortly thereafter. The application sought recovery of rent arrears from the Respondent, a tenant at the Property. The Respondent was narrated as residing at the Property.
2. The application was accepted as complete, on the information then available, on 4 September 2018 and a case management discussion was assigned for 4 December 2018. Intimation of the application papers and date of the case management discussion upon the Respondent was attempted by a Sheriff Officer instructed by the Tribunal on 13 November 2018. The Property was found to be empty, with the Respondent having said to have vacated four weeks previous.
3. The case management discussion was cancelled and on 16 November 2018 the Tribunal wrote to the Applicant seeking further details as to the current address of the Respondent. The Applicant was given until 30 November 2018 to respond.
4. The Applicant failed to respond. On 25 February 2019, the Tribunal again wrote to the Applicant reminding the Applicant that the case management discussion was cancelled due to a lack of an address and prompting the Respondent to consider a request for the application to be served by advertisement (and detailing what that would entail). The Applicant was given until 11 March 2019 to respond, and told that the application may be refused after that date.

5. No response has been received from the Applicant further to the letter of 25 February 2019, as of today's date.
6. The application was considered by me as the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8, as well as considered by myself as Legal Member in order to consider Rule 27.

DECISION

7. I considered the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

5.—(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. ...

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—

...

- 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.

8. Rule 27 states:

...

(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to...

(b) co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.

9. Rule 111 requires:

Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

(a) state...

(ii) the name and address of any other party [being, in this case, the tenant as Respondent].

10. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;...

(e) avoiding delay, so far as compatible with the proper consideration of the issues.

11. After consideration of the application and supporting papers, I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application lacking a current address for the Respondent, it cannot be accepted.

12. The Applicant has been afforded significant time to provide a current address for the Respondent, or seek service by advertisement. No response has been received. In consideration of the over-riding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters.

13. Furthermore, having requested a new address since 16 November 2018, and having prompted the Applicant to consider seeking service by advertisement since 25 February 2019, no progress has been made. The Applicant has made no response on matters at all. It is reasonable for me now to regard the Applicant as failing to co-operate with the Tribunal, and to conclude that the Tribunal cannot deal with the proceedings justly and fairly as a result. It is reasonable for me to dismiss the application under Rule 27(2)(b).

RIGHT OF APPEAL

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:-

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.

J Conn

Legal member/Chair

20 March 2019
Date