



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

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

in connection with

The Property at 165 Lochside Rd, Dumfries DG2 OEA

Case Reference: FTS/HPC/CV/20/2646

**Applicant:- Mr Laurance Kimm, 20 Newfield Caravan Park, Dumfries DG1 3 TA
Primrose and Gordon Solicitors representatives**

Samantha Cunliffe or Black, 4 Hillside Drive Dumfries, (the Respondent)

1. On 15th December 2020, an application was received from the applicant. The application was made under Rule 111 of the Procedural Rules, being an application for an order for payment of rent arrears by the Tenant.
2. The following documents were enclosed with the application:-
 - Tenancy Agreement and AT5 dated 27th April 2017
3. The Tribunal requested further information from the applicant by letter dated 14th January 2021, in particular the Tribunal asked:-

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

1. The application is made in terms of Rule 111. Rule 111 relates to civil proceedings in relation to a private residential tenancy. However, the tenancy agreement lodged with the application started on 27 April 2017, which is prior to the date when private residential tenancies could be created. Please amend the application to a rule which applies to the type of tenancy, (e.g. rule 111 for private residential tenancies, rule 70 for assured tenancies). Please consult the Procedural Rules published on the website to establish which rule would apply to the tenancy in question. 2. In the application part 5 c you do not state the amount of the order you wish the Tribunal to grant. Please amend the application to show an appropriate entry in that part of the application. 3. An application for civil proceedings requires evidence to support the application. Please provide a rent statement showing rent due, rent paid and the running total as well as evidence of the damage to the lock and state of the property together with vouching for any items claimed, such as invoices for the locksmith, invoices for cleaning etc.

Please reply to this office with the necessary information by 28 January 2021. If we do not hear from you within this time, the President may decide to reject the application.”

4. On 10th February 2021 the Tribunal wrote again asking for the following information:-

“I refer to your recent application which has been referred to the Chamber President for consideration.

Before a decision can be made, we need you to provide us with the following: We refer to the further information request dated 14 January 2021, a copy of which is enclosed with this letter, please now provide further information requested.

Please reply to this office with the necessary information by 24 February 2021. If we do not hear from you within this time, the President may decide to reject the application.”

5. No response was received. The Tribunal wrote once again on 11th March 2021 asking for a response to the previous request and advising:-

“You have been requested to provide further information so that your

application can properly be considered. You have not responded. If you do not respond in the next 14 days to our original letter of 14th January a copy of which is enclosed for your attention, then the President will have no alternative but to reject your application.

Please reply to this office with the necessary information by 25 March 2021. If we do not hear from you within this time, the President may decide to reject the application”

6. The Applicant has not replied and has failed to respond to any of the Tribunal’s requests.

DECISION

7. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

8.

“Rejection of application

Rule 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable

period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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."

9. 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 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

10. 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.
11. The applicant has failed to respond to the Tribunal's request 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. In particular the applicant, has applied the wrong rule and has failed to provide evidence supporting his application all of which are required in terms of natural justice and the Tribunal's rules of procedure to allow the Respondent to see what the Applicant is seeking and why.
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 5 and 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
Legal Member
6th April 2021