



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,  
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**

**14 Riverside Gardens, Cronberry, Cumnock, KA18 3LU ("the Property")**

**Case Reference: FTS/HPC/PR/21/1170**

**Ms Jane Gibson, 15 Lamont Crescent, Netherthird, Cumnock, KA18 3DX ("the  
Applicant")**

**Ms Louise Hanscombe, Flat 2/2, 10 John Street, Hamilton, ML3 7EU ("the  
Respondent")**

**BACKGROUND**

1. The Applicant submitted an application to the Tribunal, which was received on 17<sup>th</sup> May 2021, in terms of Rule 78 of the Rules which relates to applications for compensation for misrepresentation or concealment by a landlord under Section 21 of the Housing (Scotland) Act 1984 ("the 1984 Act"). On 26<sup>th</sup> May 2021 the Tribunal issued a letter advising the Applicant that applications under Rule 78 relate to tenancies under the Rent (Scotland) Act 1984. The letter further stated that the tenancy in respect of the Property was a short assured tenancy under the Housing (Scotland) Act 1988 and that Rule 78 and the relevant provisions of the 1984 Act would not apply. The Applicant was asked if she wanted to withdraw the application and she was asked to respond by 9<sup>th</sup> June 2021. The Tribunal wrote to the Applicant on 23<sup>rd</sup> June 2021 and indicated in that letter that if a response was not received by 30<sup>th</sup> June 2021, the

Chamber President may consider rejecting the application. No response has been received to either of the letters.

## **DECISION**

2. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules and Section 21 of the 1984 Act and Cases 7 and 8 of Schedule 2 of that Act. Rule 5 of the Rules provides: - (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 lodgment 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 requirement manner for lodgment. “
  
3. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicant has failed to comply with Rules 5 and 78 and Section 21 of the 1988 Act.**

## **REASONS FOR DECISION**

4. The Application is in terms of Rule 78 which is in respect of a protected tenancy or a statutory tenancy. The relevant tenancy agreement in respect of the Property is the Short Assured Tenancy Agreement between the parties dated 27<sup>th</sup> July 2016.
5. The Applicant has been given the opportunity to withdraw the application and has not done so. The application is not competent and there is nothing which the Applicant can do to make it so. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

### **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.

Martin J. McAllister, Legal Member  
16<sup>th</sup> July 2021