



**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

14a India Street, Edinburgh, EH3 6EZ ("the Property")

Case Reference: FTS/HPC/LA/23/0225

David Forfar, trustee of the James Clerk Maxwell Foundation ("the Applicant")

Redpath Bruce ("the Letting Agent")

1. The Applicant submitted an application to the Tribunal on 12th January 2023 in terms of Section 48 (1) of the Housing (Scotland) Act 2014 ("the 2014 Act") and Rule 95 of the Rules in respect of the alleged failure of the Letting Agent to comply with the Letting Agent Code of Practice ("the Code").

2. On 16th February 2023, the Tribunal issued a request for further information and documents to the Applicant. The Applicant was advised that, to meet the provisions of Section 48 (4) of the Housing (Scotland) Act 2014 ("the 2014 Act"), no application to enforce the Code can be made unless the applicant has notified the letting agent of the breach of the sections of the Code in question. The Applicant was advised that it required to have evidence of such intimation. The Applicant was also asked to provide a copy of a minute of the meeting of trustees at which authority for the application was given and a copy of the relevant tenancy agreement. No response was received. On 27th March 2023 the Tribunal issued a reminder letter directing the Applicant to provide a

response to the request for further information.

DECISION

3. The Legal Member considered the application in terms of Rule 5 and Rule 95 of the Rules and Section 48 of the 2014 Act. Rule 5 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. “

4. 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 Rule 5 and Rule 95 and Section 48 of the 2014 Act.

REASONS FOR DECISION

5. The Applicant’s application is in terms of Section 48 of the 2014 Act and Rule

95 of the Rules. Section 48 (4) states that “No application can be made unless the applicant has notified the letting agent of the breach of the code of practice in question.” Rule 95 (b) of the Rules states that an application must “be accompanied by a copy of the notification to the letting agent as required under section 48(4) of the 2014 Act.”

6. The Applicant has failed to provide the information and documents required by Rule 95 of the Rules and Section 48 of the 2014 Act. The Applicant has also failed to provide this information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. 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
2nd May 2023.