



**DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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 Procedure Rules")**

**Case Reference: FTS/HPC/PR/23/4301**

**23 Church Street, St Andrews, KY16 9NW ("the Property")**

**Anna Schott ("the Applicant")**

**Patricia Neville, Ronald Neville ("the Respondent")**

1. The Applicant lodged an application under Rule 103 of the Procedure Rules (application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits) in terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"), received by the Tribunal on 1 December 2023.
2. The application was considered by a Legal Member of the Tribunal acting under delegated powers from the Chamber President under Rule 9 of the Procedure Rules. An information request was sent by email to the Applicant on 7 December 2023, requesting clarification on several points, the main issue being that the application appeared to be time-barred in that it had been made to the Tribunal a day late, outwith the 3-month period after the tenancy had ended, in terms of Regulation 9(2) of the 2011 Regulations. The tenancy had ended on 30 August 2023 and the last date for the application to be made was therefore 30 November 2023. The email of 7 December 2023 stated as follows:-

*"The application appears to be time barred. In terms of the Regulations, applications under Rule 103 must be lodged with all required information and documents no later than 3 months after the tenancy has ended. You state that the tenancy ended on 30 August 2023. The application was submitted at 11pm on 30 November 2023. This means that it was not received by the Tribunal until 1 December 2023. The Tribunal has no discretion in relation to the time limit. Please clarify why you consider that the application can proceed.*

*If the application is to proceed, please provide the following-*

*1. Confirmation that the joint tenant should be added as joint Applicant or an explanation for the application proceeding in your sole name.*

*2. Information about what happened to the deposit/your share of the deposit at the end of the tenancy.*

*Please reply to this office with the necessary information by 21 December 2023. If we do not hear from you within this time, the President may decide to reject the application.”*

3. No response was received from the Applicant who was then written to in similar terms on 3 January 2024 and again on 8 February 2024. The Applicant was advised in the Tribunal’s email of 8 February 2024 that if a response was not received by 15 February 2024, the application would be rejected. No response has been received from the Applicant.

## **Decision**

4. Following further 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.”

## **Reasons for Decision**

5. Rule 5 of the Procedure Rules states that 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...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
6. The Applicant has failed to meet the mandatory requirements for lodgement. These requirements have been explained to the Applicant who has been given several opportunities to provide the documentation required or clarify the position. However she has failed to do so.
7. The Applicant has failed to comply with Rules 5 and 103 of the Procedure Rules and with Regulation 9(2) of the 2011 Regulations. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. 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.

Nicola Weir, Legal Member  
21 February 2024