



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

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

in connection with

Case reference FTS/HPC/CV/23/2889

**Parties**

**Miss Scarlet Phoenix (Applicant)**

**KINGSISTERSLETTINGS (Respondent)**

**31/ Buchanan Street, Edinburgh, EH6 8RD (House)**

**BACKGROUND**

1. On 21<sup>st</sup> August 2023 the Applicant lodged an application for payment of compensation from the Respondent in respect of damp and other issues arising out of her tenancy of the property at 31/ Buchanan Street, Edinburgh, EH6 8RD ('the property'). The application was made in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant did not specify the sum of money she was seeking and did not attach any supporting documents including a copy of the tenancy agreement.

2. The Tribunal administration requested further information from the Applicant on 24<sup>th</sup> August 2023 as follows:

*"We acknowledge receipt of your application to the First-tier Tribunal for Scotland (Housing and Property Chamber). The reference number allocated to your case is FTS/HPC/CV/23/2889. Please quote this reference number every time you contact us. This will help us process your case as quickly as possible.*

*The following further information is required from you before your application can proceed to the Chamber President for consideration:*

- *Tenancy agreement*
- *evidence to support the application*
- *a copy of any relevant document Please reply to this office with the necessary information by 31 August 2023, otherwise the application may be rejected."*

3. No response was received from the Applicant and the Tribunal wrote again by e-mail on 28<sup>th</sup> September 2023 on the instructions of a legal member seeking the following information:- *"Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:*
- 1. We require the full and correctly spelled address of the property to which the application relates, including a flat number, if relevant.*
  - 2. The Respondent is named as a letting agent. It would be unusual for the letting agent to be the landlord. As you have not supplied a copy of the tenancy agreement, we are unable to check the identity of the landlord. Please provide a copy of the tenancy agreement and amend the application form to show the correct Respondent.*
  - 3. You have provided no evidence to support your application. We cannot accept an application without supporting evidence, as already notified to you. Please provide all supporting evidence.*
  - 4. You state that you are seeking compensation. You must indicate the exact amount of compensation sought, showing how you have calculated this amount. This is a complex matter and you may wish to take advice from a solicitor or advice agency on this matter. Please reply to this office with the necessary information by 12 October 2023. If we do not hear from you within this time, the President may decide to reject the application."*

4. No response was received from the Applicant and a further request was sent on 13<sup>th</sup> November stating *“A legal member of the Tribunal with delegated powers of the Chamber President has further considered the application and has determined that the following information is still required in order that the application can progress:- • It is noted that you have not yet responded to the previous information request from the Tribunal dated 28 September 2023 (copy attached). It is requested that you respond within the next 14 days, failing which your application may be rejected. As per the previous email, you may wish to consider seeking independent legal advice in relation to this matter. Please reply to this office with the necessary information by 27 November 2023.”*
5. No response was received and the Tribunal wrote a further reminder on 29<sup>th</sup> December 2023, by post as there had been no response to the emails sent as follows:- *“I refer to your recent application which has been referred to the Chamber President for consideration. As per our emails dated 28 September 2023 and 13 November 2023 - 1. We require the full and correctly spelled address of the property to which the application relates, including a flat number, if relevant. 2. The Respondent is named as a letting agent. It would be unusual for the letting agent to be the landlord. As you have not supplied a copy of the tenancy agreement, we are unable to check the identity of the landlord. Please provide a copy of the tenancy agreement and amend the application form to show the correct Respondent. 3. You have provided no evidence to support your application. We cannot accept an application without supporting evidence, as already notified to you. Please provide all supporting evidence. 4. You state that you are seeking compensation. You must indicate the exact amount of compensation sought, showing how you have calculated this amount. This is a complex matter and you may wish to take advice from a solicitor or advice agency on this matter. Please reply to this office with the necessary information by 12 January 2024. If we do not hear from you within this time, the President may decide to reject the application.*
6. No correspondence has been received from the Applicant in response to the original request for information sent on 28<sup>th</sup> September 2023 nor in response to the two reminders sent.

## DECISION

7. I considered the application in terms of Rule 5 and Rule 8 of the Procedural Rules.

8. Rule 5 provides:-

“Requirements for making an application:

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.”

9. Rule 8 provides:

“8. Rejection of application

(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.”

10. The applicant has failed to respond to the Tribunal’s substantive requests 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 particular the Applicant has not provided details of what she is seeking or a copy of the tenancy agreement. 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.

11. 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 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.

Legal Member  
20<sup>th</sup> February 2023