



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

Ref: FTS/HPC/CV/20/1937

Re: 1 and 4 Anne's Mews, Hamilton, ML3 7ED ("the Property")

Mrs Elizabeth Glass 1 Sycamore Drive, Hamilton, ML3 7HF ("the Applicant")

Mr John White 5 Anne's Mews, Hamilton, ML3 7ED ("the Respondent")

DECISION

**It was determined by the Legal Member acting under the delegated powers of the
Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the Application must be
rejected in terms of Rule 8(1).**

REASONS

- 1. On 15 September 2020, an application (undated) was received from the Applicant
("the Application"). The Application was made under Rule 70 of the 2017 Rules, being
an application for civil proceedings in relation to an assured tenancy under the Housing
(Scotland) Act 1988 ("the 1988 Act"). The Applicant seeks an order for payment in respect
of return of a tenancy deposit of £742.50 paid to the Respondent.**
- 2. An application made in terms of Rule 70 must:**

“(a) state—

- (i) the name and address of the person;*
 - (ii) the name and address of any other party; and*
 - (iii) the reason for making the application;*
- (b) be accompanied by—*
- (i) evidence to support the application; and*
 - (ii) a copy of any relevant document; and*
 - (c) be signed and dated by the person.*

3. The Applicant submitted a separate application, apparently in respect of the same issue (CV/20/1936). The applications were administratively joined for the purposes of further consideration.
4. On 22 September 2020, the Application was considered by a Legal Member with the delegated powers of the Chamber President. It was determined that the Applicant had submitted an incomplete Application in that it Was unsigned and undated and did not fully specify the reason for making the Application nor explain the relationship to the second related application; and the Application was not accompanied by all of the required supporting evidence and documents.
5. On 25 September 2020, a letter was sent to the Applicant requesting further information, as follows:

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

1. You refer to two tenancies being entered into with the respondent, the legal member notes that as part of the section 6 required documents in the application form you refer to the “tenancy agreement/did not receive any documents” however no tenancy agreements have been lodged. It is not clear if you received any tenancy agreements. Please either submit tenancy agreements entered into, or provide confirmation of the following terms of each lease :- a. Start date; b. End date; c. How often was rent due, what amount was due and what period/how often was it due (monthly/4 weekly etc.); d. Which property refers to which lease; e. Amount of deposit agreed for each lease; and f. Any other terms of the lease agreed.

2. Please provide evidence that a deposit was paid.

3. If you are seeking return of the deposit, please explain why you have made two separate applications. Both applications appear to deal with the same issue.

Given that you state that the deposit for the first lease was transferred to the second lease, do you require to lodge two applications, if so can you please explain why?

Please consider if one of the applications should be withdrawn. Can you provide evidence that the full deposit amount for the first lease was transferred to the second lease? Or evidence that some of the deposit monies were withheld for the matters relating to the first lease?

4. Please provide evidence of your requests for repayment of the deposit from the landlord; please provide evidence of any response from the landlord to these requests.

5. Please also provide a signed and dated final page of the application form(s)

which you have lodged and wish to proceed with.

Please reply to this office with the necessary information by 9 October 2020. If we do not hear from you within this time, the President may decide to reject the application”

6. The Applicant failed to respond to the request for further information within the stipulated time.
7. On 21 October 2020, a further letter was sent to the Applicant in the following terms:

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

Please provide the information requested in the Tribunal’s letter to you of 25 September 2020.

Please reply to this office with the necessary information by 4 November 2020. If we do not hear from you within this time, the President may decide to reject the applications.”

8. The Applicant failed to respond to the further request for information within the stipulated time.
9. On 17 November 2020, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 70 of the 2017 Rules.

3 Rule 8 provides:-

“Rejection of application

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."

- 4 After consideration of the Application, the attachments, and the further information requests, it was determined that the requirements for making an application under Rule 70 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 70. The Applicant has failed to respond to the tribunal's further information requests. The Applicant has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

5 What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

17 November 2020