



**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 Procedural Rules")

in connection with
260 Talla Road, Glasgow, G52 2AY
Case Reference: FTS/HPC/EV/21/2071

John Deans ("**the applicant**")

Donna Smith ("**the respondent**")

1. On 30th August 2021 an application, signed and dated 25th August 2021, was received from the Applicant Mr Deans by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT). The application was made under Rule 109 of the Rules of Procedure for recovery of a property let under a private residential tenancy.
2. On 9th September 2021 the FTT wrote to the Applicant requiring him to provide further information and documentation: a copy of the relevant tenancy agreement, evidence on how and when the Notice to Leave had been served on the Respondent, evidence of service of the Section 11 Notice on the local authority and evidence supporting the ground of eviction (anti -social behaviour)
3. No information was provided by the Applicant and the FTT sent another letter on 2nd October seeking delivery of the information and documents. The letter stated that, if the requirements of the FTT were not met by 3rd November 2021, it is possible that the President would reject the application.

B DECISION

1. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule 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."

2. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65]**First-tier Tribunal orders¹) of the 2011 Regulations, the application must—

(a)state—

(i)the name and address of the tenant or former tenant;

(ii)the name, address and profession of any representative of the tenant or former tenant; and

(iii)the name, address and registration number (if any) of the landlord;

(b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c)evidence of the date of the end of the tenancy (if available); and

(d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Requirements for making an application

5.—(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.

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.”

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (a) (iii) of the Procedural Rules states that such an application must state the name, address and registration number (if any) of the landlord. An application of this nature can only be directed against a landlord and thus the application has to state the name and address of the landlord. The respondent stated in the application was clearly the letting agent and not the actual landlord and this issue was identified by the applicant in the application because she stated that *"One of the staff members at the letting agency has also been confirmed to be the landlord of the property, and is currently undergoing Landlord investigations with Falkirk council for letting other properties illegally."* There was no information provided in the application which disclosed the actual landlord details.
2. The Applicant states that the tenancy ended in April 2021. It was stated that the end of tenancy invoice showed the end of the tenancy date. The invoice was dated 18 April 2021. As the invoice clearly relates to items identified as having to be paid after the property was vacated, the end date of the tenancy was at the latest 18 April 2021.
3. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 *"(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended."* Regulation 10 then states: *"If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit..."*
4. If the tenancy ended on 18 April 2021 the application would have to have been made on 18 July 2021 to be a valid application.
5. The application form was submitted by email of 27 June 2021 but at that point was clearly incomplete as it did not state the name of the landlord. The FTT wrote to the Applicant asking for this information. It is unfortunate that the FTT letter on 12 July 2021 did not identify to the applicant that in terms of the Rules of Procedure the application would be considered to be incomplete until this was available and that there was a time limit on such applications, which would run out shortly after the request for further information was made. However, as a matter of fact the information about the landlord was not produced until 24 August 2021, when the applicant finally sent the email with the name of the landlord and an address she considered to be the landlord's address.
6. Even if one was to accept that the email on 26 July 2021 at least provided the name of the landlord, this date was also already after the 3 months time limit for the application had expired and whilst in the email of 26 July 2021 the applicant may have provided a name for the landlord, she had not provided an address and had further attached a landlord registration document that showed conflicting information as it stated the landlord not as Angelo Langeillo but as Mitchells asset management services. At that stage the application was still incomplete and it was not absolutely clear who the applicant wished to direct the application against. This was only finally confirmed in the email of 24 August 2021, which contained a full statement of the respondent's name and address. It was also only on that date when the applicants provided the full details of all applicants.

7. In terms of Rule 5 (3) of the Procedural Rules “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.” In terms of Rule 5 (3) of the Procedural Rules the necessary information was not received until 26 July 2021 at the earliest. However, after 18 July 2021 it was too late to make a valid application to the FTT under Rule 103 because of the clear time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and the definition of the date when the application is made as stated in Rule 5 (3).
8. It would not be appropriate for the Tribunal to accept an application which is made out with the 3 months time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
9. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: “ [1] *The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and subordinate legislation in the form of regulations made by the Scottish Ministers.* In UT60 [2019] Sheriff Di Emidio states at paragraph 14: “*It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT’s decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant.*”
10. The original application, whilst made within the 3 months period, was incomplete and not directed against the correct respondent. The landlord details were only provided after the period of 3 months had expired and thus the application, which in terms of Rule 5 (3) is considered to be made when the application documents are finally complete, has to be rejected as having been made after the period stated in Regulation 9 expired.

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

18 November 2021