



**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/PR/21/1553**

Kingston of Lenabo, South Redbog, Nether Kinmundy, Peterhead, AB42 4YH ("the  
Property")

Mr James Mehigan, 7 Cleveland Place, Peterhead, Aberdeenshire, AB42 1AG ("the  
Applicant")

Mr Scott Buchan, Kingston of Lenabo, South Redbog, Nether Kinmundy, Peterhead,  
AB42 4YH ("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 1 June 2021, an application was received from the Applicant ("the  
Application"). The Application was made under Rule 103 of the 2017 Rules,  
being an application for order for payment where landlord has failed to carry  
out duties in relation to tenancy deposits.

2. There were no documents submitted as supporting evidence with the application. In the cover email submitting the Application, the Applicant stated *"Please note application date as today 01/06/2021 as nearing three month application limit"*.

3. An application made in terms of Rule 103 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 end date of the tenancy (if available); and*

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

4. On 18 June 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

*"... I refer to your recent application which has been referred to the Chamber President for consideration.*

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

*1. Please confirm the date on which the tenancy ended and provide evidence of this.*

*2. Please provide a copy of the tenancy agreement.*

*3. You have stated that the property address is the same as the Respondent's address. Please confirm that this is where the Respondent currently resides as the application has to be served at the respondent's own address.*

*Please note that an application under Rule 103 must be lodged with all required information within three months of the tenancy coming to an end. Please reply to this office with the necessary information by 2 July 2021. If we do not hear from you within this time, the President may decide to reject the application. ..."*

5. The Applicant failed to respond to the request for further information within the stipulated timescale.

6. On 26 July 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

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

- 1. Please confirm the date on which the tenancy ended and provide evidence of this.*
- 2. Please provide a copy of the tenancy agreement.*
- 3. You have stated that the property address is the same as the Respondent's address. Please confirm that this is where the Respondent currently resides as the application has to be served at the respondent's own address as opposed to the rental property (unless they are the same).*
- 4. Please provide proof of payment of the deposit to the landlord and/or refer to the relevant section of the tenancy agreement.*

*Please reply to this office with the necessary information by 9 August 2021.*

*If we do not hear from you within this time, the President may decide to reject the application. ...”*

7. The Applicant failed to respond to the request for further information within the stipulated timescale.

8. On 26 August 2021, the Application was considered by a legal member acting with the delegated power of the Chamber President and a letter was sent to the Applicant as follows:

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

*We refer to your application dated 1st June and to the 2 letters we have sent requesting further information without which your application cannot be accepted. The information required is as set out in our previous letter of 26th July a copy of which is enclosed for your attention.*

*As previously advised in applications under Rule 103 you are required to provide all relevant information within 3 months of the end of the tenancy for the application to be valid. If you respond now and the tenancy ended more than 3 months ago your application is likely to be rejected. Please now let us have the information or advise if you wish to withdraw your application.*

*Failure to respond within this further final period of 10 days is likely to result in the application being rejected.*

*Please reply to this office with the necessary information by 5 September 2021. If we do not hear from you within this time, the President may decide to reject the application. ...”*

9. The Applicant failed to respond to the request for further information within the stipulated timescale.
10. On 20 September 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.
11. 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."*

12. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's repeated failures to respond, it was determined that the requirements for making an application under Rule 103 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 103. The Applicant did not provide the information required in terms of Rule 103, in particular: (i) confirmation of the address of the landlord (Respondent), (ii) a copy of the tenancy agreement or much information about the tenancy as the tenant / former tenant (Applicant) can give; and (iii) information / evidence of the end date of the tenancy. In the absence of evidence of the end date of the tenancy the tribunal was unable to determine if the Application was timebarred in terms of the 2017 Rules. 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).

### **13. 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.

**Susanne Tanner**

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

Legal Member

20 September 2021