



**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/21/1256

0/2, 151 Royston Road, Glasgow, G21 2QL ("the Property")

**Chiamaka Egwuh and Olisaemeka Egwuh, 2/31, 220 Wallace Street, G5 8AH ("the
Applicants")**

"Bernard", [full name not provided], [address not provided] ("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 25 May 2021, an application was received from the Applicants ("the Application"). The Application was made under Rule 103 of the 2017 Rules, being an application for an order for payment where a landlord has failed to carry out duties in relation to tenancy deposits.
2. 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 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.*

3. The Applicants submitted an incomplete application, in particular in that no Respondent surname and no Respondent address was included in the application. In addition, the order sought was not one which was competent in terms of Rule 103 as the Applicants were seeking repayment of their deposit.

4. On 11 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 Applicants, as follows:

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

1. Your application has been raised under Rule 103 of the Tribunal Procedure Rules. This relates to applications where tenancy deposit has not been protected. In your application you state that you wish repayment of the deposit. If you wish to seek repayment of the deposit you must raise a separate application under Rule 111.

2. The application cannot proceed without the name and address of the landlord. You can apply for service by advertisement where the address of the landlord is unknown. In order to do so you must satisfy the Tribunal that you have taken reasonable steps to trace him – such as having obtained trace report from sheriff officers. The service by advertisement may be downloaded from the Tribunal website.”

5. On 24 June 2021, the Applicants responded as follows:

Our reference number is: FTS/HPC/PR/21/1256

I am applying to the tribunal for repayment of deposit and tenancy deposit not being protected. We applied for a service by advertisement because the full name and address of the landlord is unknown to us and we have taken reasonable steps to obtain this. We have also enclosed screenshots of our conversations with the landlord, emails of the deposit scheme, and phone

numbers of sheriff officers we had called.

-My deposit was not paid into a deposit scheme and was paid a sum of £126 out of £650 last week when the tenancy ended in March

-We were accused of not cleaning the flat which the landlord took £200 off. Below are proofs of how we left the flat

-The landlord took £325 off the deposit for a two-week notice period even though we had mentioned to him in November that we wanted to leave his building. He assured us he was going to look for another but never did.

-The landlord never provided paperwork of tenancy agreement which he promised at the start of the tenancy

-I am not sure the landlord is registered

-The landlord has refused to pick my calls or to respond to my texts

However, the only thing damaged in the flat was a crack in the freezer and the curtains in the bathroom and near the window in the kitchen.

We had left the property because we were threatened. Snowballs were thrown on our windows occasionally, we were also called 'negores and cunts.' Our bike was stolen in our backyard which was reported to the police as well. We did not feel safe in that environment and we had mentioned it to the landlord."

The Applicants also attached a Service by Advertisement application but it was incomplete in that it specified only the forename "Bernard" for the Respondent. Insufficient supporting evidence of efforts to trace the Respondent was produced.

6. On 12 July 2021, the Application in terms of Rule 103 was considered by a legal member acting with the delegated power of the Chamber President and a letter was sent to the Applicants 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. *As previously advised, the applications cannot proceed without a full name for the Respondent. Whether the application is served on the Respondent in person or by advertisement on the website, a full name is required. The property appears to be owned by Prestige Castle Limited. A copy of the title sheet is attached. However, the Tribunal cannot comment on whether this company is your landlord and you must make your own enquiries. Please provide a full name for the landlord or the application may be rejected.*

2. *You have requested service by advertisement. You must provide a trace report from a Sheriff Officer or tracing agent for this to be considered. You will require a full name in order to obtain such a report.*

3. *For application PR/21/1256 a completed application with all required information must be lodged with the Tribunal within 3 months of the tenancy ending. As you have not provided a full name it appears that you have not complied with this requirement within the specified timescale. Please confirm the basis upon which the Tribunal can consider the application.”*

Please reply to this office with the necessary information by 26 July 2021. If we do not hear from you within this time, the President may decide to reject the application.”

7. In relation to point 3 in the further information request, it was noted that by 12 July 2021, it was more than three months from date stated by the Applicants in the application form as the end date of the tenancy, which, if correct, would mean that the application would be timebarred in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

8. The Applicants failed to respond to the request for further information.

9. On 10 August 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, and a letter was sent to the Applicant in the following terms:

“Your application has been reconsidered by a legal member of the Housing and Property Chamber who notes:

You have not responded to our letter requesting further information for both above applications dated 12th July a copy of which we enclose.

Can you please respond to this letter as otherwise we cannot proceed with either application.

If you wish to withdraw the application under PR/21/1256 because you believe you are out of time to make the application as per our letter then you can do so and can ask to continue with the civil application, but we still require a name and address or name and application for service by advertisement to allow that application to proceed. Please let us have your response to our letter of 12th July within 14 days (24 August 2021) failing which your applications may be rejected.”

10. A copy of the letter of 12 July 2021 was enclosed with the above email.

11. The Applicants did not respond to the request for further information within the stipulated timescale.

12. On 9 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.

13. 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."

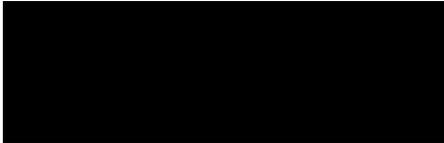
14. After consideration of the Application, the attachments, the repeated further information requests and the Applicants' repeated failures to respond, it was determined that the requirements for making an application under Rule 103 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 103. In particular, the Applicant did not provide a name for the Respondent or an address for the Respondent, which failing a complete application for service by advertisement. 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. The

application appears to be timebarred on the information provided by the Applicants in the application form and no explanation has been provided to suggest that the tenancy terminated at a later date. 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).

15. 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

9 September 2021