



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

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

in connection with

6 Gillies Court, Ecclefechan, Lockerbie, DG11 3EB

Case Reference: FTS/HPC/PR/21/1330

**Mr Victor Colley, Mrs Ronwynne Colley 7 Burnholme Road Kirkpatrick fleming,
Lockerbie DG11 3AX (the Applicant)**

Dumfries and Galloway Citizens Advice (Applicant's Representative)

**Mr Allan Murray, Mrs Mari Murray 6 Gillies Court Ecclefechan Lockerbie DG11
3EB (the Respondent)**

1. On 31st May 2021, an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules, being an application for an order for a penalty for failure to pay a tenancy deposit into a tenancy deposit scheme by the Tenant against the Landlord. At the same time the Applicant lodge an application under Rule 111 for return of the deposit.
2. The Applicant lodged a copy of the tenancy agreement commencing 1st December 2017 and evidence of the end of the tenancy on 31st October 2020 with the application.
3. The Tribunal requested further information from the applicant by letter dated

17th June 2021. The Tribunal asked for the following information in respect of this application:-

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

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1. An application for breach of the tenancy deposit regulations must be made no later than 3 months after a tenancy has ended. It appears from the application papers that the tenancy ended 31 October 2020, if this is the case then the right to bring an application under rule 103 expired at the end of January 2021. Can you please consider this matter and either explain why you consider that it has been brought within 3 months of the end of the tenancy or, if you accept that it is out of time then please withdraw the application.

2. Please provide evidence that a deposit had to be paid for the tenancy, there is no reference in the lease agreement that a deposit was taken in terms of the lease; please explain in what way you were requested to pay a deposit.

3. Please provide evidence that a deposit was paid.

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

5. The Applicant's representative Mr Ian Maxwell responded on 30th June 2021 and made comments firstly regarding a separate civil application and then as follows in respect of this application:-

"The Second application that the claimants have lodged was a form G under rule 103. This application was made as the respondents did not comply with the Tenancy deposit regulations. And should be correct in the content of the Form G application. The facts are the same as the form F application in as the deposit was paid in cash form as requested by the respondents. There was no receipt provided. The claimants do not have any evidence of the payment being made. There has not been any denial made by the respondents as to the payment having been made. I have attached a second copy of the letter referred to in the application given by Mrs Murray to Mrs Colley when she returned the keys to the property on the 1st November 2020 As per point 1 of your request letter on the 17th June 2021: where you have indicated that an application for breach of the tenancy deposit regulations must be made no later than 3 months after

a tenancy has ended. You are correct in stating that the tenancy ended on the 31st October 2020. An application was lodged and accepted in January 2021 within the 3 months' time limit.(Ref FTS/HPC/CV/21/0182) Due to concerns that the claimants had not entered sufficient content/rules etc on the application, there was discussions between Citizen's advice Maggie Burns and Emmanuel De Abreu HPC caseworker officer. After discussion it was agreed that the application should be withdrawn and re-lodged once the claimant had sought assistance with adding the appropriate content to support their case. On taking on the claimant's case I did realise that the application would be out with the 3 months. This is the reason that a form F and a Form G application were made. So that if the rule 103 were rejected then the rule 111 would still be able to be heard. I did make a telephone enquiry with HPC and was told that Mr De Abreu was no longer in that department but there was mention of discussions on your systems before the first application was withdrawn around the end of March 2021. With the intention to re-submit".

The Applicant's representative has not indicated that he wishes to withdraw this application although he admits the tenancy ended over 3 months ago.

6. DECISION

7. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

8.

"Rejection of application

Rule 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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."

9. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

10. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-
"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
11. The applicant has confirmed that the tenancy ended on 31st October 2020. This application has been made on 31st May 2021 this is more than 3 months since the end of the tenancy. In terms of S9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 an "application under paragraph 1 must ...be made no later than 3 months after the tenancy has ended." This application was made more than 3 months after the end of the tenancy. The Applicant's representative advises that an earlier application was made timeously but that application has been withdrawn by the Applicant. In the circumstances I consider that this application is misconceived and has no hope of success therefore it must be rejected.
12. 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.