

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") and the Tenancy Deposits (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/21/1822

Parties:

Mr Scott Souter, 11 Ballgreen Road, Biggar, ML12 6GP ("the Applicant")

Mr Richard Calveley, 1 Castle Yett, Biggar, ML12 6QQ ("the Respondent")

At Glasgow on 8TH September 2021, Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules.

1. This is an application by the Applicant under Rule 103 of the Rules for an order for payment because he considers that the Respondent has failed to carry out duties in relation to a tenancy deposit,
2. The application is dated 24th July 2021.
3. On 11th August 2021, the Tribunal wrote to the Respondent and requested various items of information.
4. On 26th August 2021, the Applicant wrote to the Tribunal indicating that he

was having difficulty in providing the information but hoped to “provide an update next week.”

5. The Applicant has provided no further information.
6. The application states that the tenancy for the Property commenced on 14th April 2017 and ended on 5th April 2021.
7. The application was seeking return of a tenancy deposit and compensation in respect of the deposit not having been lodged with an approved scheme.
8. Section 9 of the Tenancy Deposit Regulations states:

9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff (now 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 by summary application and must be made no later than 3 months after the tenancy has ended.

9. The application before the Tribunal was submitted later than three months after the tenancy had ended.
10. Rule 8(1) (a) of the Rules allows an application to be rejected by the Chamber President or another member acting under delegated powers if “*they consider that an application is vexatious or frivolous*”.

“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”.

11. I consider this application to be frivolous and that it has no prospect of success given that the terms of the 2011 Regulations have not been followed. For the application to be considered for determination, it would have had to have been submitted prior to 4th April 2021.
12. The application makes reference to the Applicant wanting an order for payment in respect of return of a tenancy deposit. The application he submitted was under Rule 103 and it is a matter for the Applicant if he decides to make an application under Rule 111 in respect of any order for payment.

13. Further, in terms of Rule 8 (1) (c) of the rules I have good reason to consider that it would not be appropriate to accept this application.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Martin McAllister

Martin J. McAllister
Legal Member
8th September 2021