



**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/20/1827

Re: 8 McAllister Court, Main Street, Bannockburn, FK7 8PT ("the Property")

Mr Colin Nicoll 47 Main Street, Bannockburn, FK7 8LX ("the Applicant")

Mr Derek Gillespie, present whereabouts unknown ("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 28 August 2020, at 2102h, an application dated 27 August 2020 was received from the Applicant ("the Application"). The Application was made under Rule 103 of the 2017 Rules, being an application for an order for payment where landlord has failed to carry out duties in relation to tenancy deposits. The Applicant attached copy emails from Safe Deposits Scotland and a screenshot of an email from Clyde Property to the Applicant relating to repairs dated 15 April 2020.

2. An application made in terms of Rule 103 and the Tenancy Deposit Scheme (Scotland) Regulations 2011 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;

(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) be signed and dated by the landlord or a representative of the landlord.”

3. The Applicant submitted an incomplete Application Form as the Applicant did not supply all of the required information. The Application was not accompanied by all of the required documents.
4. On 3 September 2020, the Application was considered by a Legal Member with the delegated powers of the Chamber President. On 7 September 2020, a further 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 can you provide documentary evidence (if available) of the end date of tenancy.*
2. *Please provide a written submission in support of an argument that your application to the tribunal has been made in time, having regards to point 1. You have specified the end date in the Application form as 28 May 2020. Please note that your Application to the tribunal was submitted by email dated 28/8/20 at 2102h. An Application in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011 must be made within the statutory time limit which is “no later than three months after the tenancy has ended.*
3. *Please provide a copy of the tenancy agreement.*
4. *Please provide documentary evidence of the date of payment of the deposit to the landlord (if available).*
5. *Please confirm if your deposit has now been repaid to you via the statutory deposit protection scheme and provide any document in relation to the same.*
6. *Please provide an address for the landlord on section 3 of the Application form, which you may be able to obtain from the tenancy agreement, his agents or Landlord Registration Scotland. If you do not have an address you will require to take steps to find an address such as requesting them from the agents or instructing sheriff officers to carry out a trace and then complete an application*

for Service by Advertisement on the landlord. The Application and Guidance can be found on the tribunal Chamber's website:
<https://www.housingandpropertychamber.scot/sites/default/files/hpc/SERVICE%20BY%20ADVERTISEMENT%20REQUEST.pdf>.

Please reply to this office with the necessary information by 21 September 2020. If we do not hear from you within this time, the President may decide to reject the application.

- 3 The Applicant failed to respond to the request for further information.
- 4 On 13 October 2020, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.
- 5 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."

- 6 After consideration of the Application, the attachments, and the further information request, 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 has failed to respond to the tribunal's further information request. 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).

7 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

13 October 2020