

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

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

in connection with

20 Springfield, Dundee, DD1 4JE

**Case Reference: FTS/HPC/PR/21/2096**

**AMBER WADEE, CHARLOTTE HUTCHISON, EMILY LETTICE, EVE MACK, HAYLEY  
CUNNINGHAM, JODIE HUNTER, SARAH ROBERTSON ("the applicants")**

**PAVILLION PROPERTIES ("the respondent")**

1. An application dated 20<sup>th</sup> August 2021 was received from the applicants under Rule 103 of the Chamber Procedural Rules being an application for an order for payment where a landlord has not paid the deposit into an approved scheme. The following documents were enclosed with the application:-
  - (a) Copy private residential tenancy agreement;
  - (b) Copy text message confirming tenancy end date;
  - (c) Copy e-mail correspondence from an approved scheme.

## DECISION

2. I considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule 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."*

3. After consideration of the application, the attachments and correspondence from the applicants, I considered that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

## REASONS FOR DECISION

4. '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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
5. The respondent in this application is the landlord's letting agent. The landlord is specified in the lease agreement as being Mrs Dorcas Adesanya, and her letting agent is specified in the lease agreement as being the respondent.
6. This application is brought under Rule 103 of the Chamber Procedural Rules and Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* ("the 2011 Regulations"). Regulation 9(1) of the 2011 Regulations provides that "A tenant who has paid a tenancy deposit may apply to 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". Regulation 3 of the 2011 Regulations concerns the obligation placed on a landlord to pay the tenancy deposit into an approved scheme within 30 working days of the commencement of the tenancy. Regulation 10 of the 2011 Regulations provides that "If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to (i) pay the tenancy deposit to an approved scheme; or (ii) provide the tenant with the information required under regulation 42".
7. Accordingly, it may be seen that the provisions of the 2011 Regulations concern a tenant applying to the Tribunal for an order under Regulation 10 where the landlord has not complied with Regulation 3. In that event, the Tribunal must make an order

against the landlord in respect of any such breach. The respondent in this application is not the landlord, but is the landlord's letting agent. The Tribunal has no power to make any order against a party who is not the landlord in these circumstances in terms of the 2011 Regulations.

8. Regulation 9(2) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* provides that an application such as this must be made no later than 3 months after the tenancy has ended. This is a mandatory requirement, and the Tribunal has no discretion to waive or extend it. The applicants have confirmed that the tenancy ended on 30<sup>th</sup> May 2021, and accordingly if they were now to seek to amend the application by substituting the landlord as respondent, they are too late to do so.

9. As a result, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

#### **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.

**Neil Kinnear**

Neil Kinnear  
Legal Member

10<sup>th</sup> September 2021