



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

15 Castlevue, Letham, Perth ("the Property")

Case Reference: FTS/HPC/PR/23/1658

Angela Bone, 6 Old Scone Cottages, Old Scone ("the Applicant")

Sandra McNicol, Address Unknown ("the Respondent")

1. The Applicant lodged an application on 23 May 2023, seeking an order in terms of Rule 103 of the Procedure Rules and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The application was lodged with several documents, including a tenancy agreement and emails relating to the tenancy terminating on 26 April 2023. The Applicant provided a care of address for the Respondent. The Tribunal issued a request for further information, directing the Applicant to provide an address for the Respondent or submit an application for service by advertisement. In response, the Applicant stated that she only has the c/o address and that it is the contact address on the Register of Landlords. She also stated that the Respondent resides in Spain. The Tribunal issued two further requests for information on 14 June and 19 July 2023, directing the Applicant to provide the current address or apply for service by advertisement. She has failed to respond.

DECISION

2. The Legal Member 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 and documents lodged in support of same the Legal Member considers there is good reason to believe that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Rules.**

Reasons for Decision

4. Regulation 3 of the 2011 Regulations states - “(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy – (a) pay the deposit to the scheme administrator of an approved scheme.” Regulation 9 of the 2011 Regulations states – “(1) 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. (2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.”
5. Rule 5(1) of the Rules states that 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 the...” relevant rule. Rule 103 states that an application must include the address of the Respondent. This is required so that the Tribunal can serve the application on the Respondent. Rule 5(4) states that, where the address of a party is not known, the Applicant must state this in the application and complete a request for service by advertisement. In terms of Rule 5(4), an Applicant must provide details of the steps taken to ascertain the address.
6. The application was submitted with a c/o address. The Tribunal has directed the Applicant to provide the actual address or apply for service by advertisement. The Applicant has confirmed that the Respondent does not live at the address she has provided and is believed to reside in Spain. The Applicant has failed to submit an application for service by advertisement as required by Rule 5. The Legal Member is therefore satisfied that it would not be appropriate to accept the application. It is rejected on that basis.

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.

Legal Member
23 August 2023