

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

3F1, 10 Cheyne Street, Edinburgh, EH4 1JE ("the property")

Case reference FTS/HPC/PR/21/1286

Parties

Mr Greg Brown (Applicant)
Ms Clare Mackay (Respondent)

A BACKGROUND

1. On 28 May 2021 the applicant's representative Mr Wilson, Community Help & Advice Initiative (CHAI) lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 103 of the Procedural Rules. The application did not contain any information as to when the tenancy came to an end.
2. On 17 June 2021 the Tribunal wrote to the Applicant's representatives:
" Before a decision can be made, we need you to provide us with the following:
 1. It is noted there are two tenants named in the lease can you advise if the other tenant Ms Ailean Beaton wishes to join the application or if it is to be made by Mr Brown alone?

2. In the e-mail you lodge from Mr Brown he mentions evidence of the date of the end of the tenancy but this is not enclosed and the date itself is not mentioned. Can you please confirm when the tenancy ended and provide any evidence the Applicant may have of the end date.

Please reply to this office with the necessary information by 1 July 2021. ”

3. On 21 June 2021 the Tribunal the Applicant’s representative replied:

“ I write in reply to your letter of 17th June, requesting further information for the above application.

In response to the first question: we act solely for Mr Brown, Ms Beaton is not a party to this application.

In response to the second question, please find attached a copy of the notice to leave which the tenants gave jointly to the respondent. It was by email from Ms Beaton, sent with the applicant's consent and copied to him at the same time. It shows that notice was given for 1st March 2021.

The email contained a copy of the email sent by the other tenant of the property on behalf of the joint tenants on 27 January 2021 to the respondent stating the end date of the tenancy as 1 March 2021.

4. The documents are referred to for their terms and are held to be incorporated herein.

B DECISION

1. I considered the application in terms of Rule 8 of the 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."

- 2. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65**First-tier Tribunal orders**]**) of the 2011 Regulations, the application 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; and

(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 date of the end of the tenancy (if available); and

(d) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Requirements for making an application

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

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (c) of the Procedural Rules states that such an application must be accompanied by evidence of the date of the end of the tenancy.
2. The further information provided on 21 June 2021 states that the tenancy ended on 1 March 2021. In terms of Regulation 9 (2) 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.”
3. In this case if the tenancy ended on 1 March 2021 the application would have to have been made on 1 June 2021 to be a valid application.
4. The application form was submitted by email of 28 May 2021 but the lodging requirement of supplying evidence of the end date was not met at that time. At that time the application was not validly made.
5. The FTT requested this information at a time when the end date was not known to the FTT. The applicant’s representative provided the email of 27 January 2021 on 21 June 2021.
6. In terms of Rule 5 (3) of the Procedural Rules “the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.” In this case that date was 21 June 2021, as the document showing the end date of the tenancy had finally been submitted on that date. Unfortunately for the Applicant, in terms of Rule 5 (3) of the Procedural Rules by then it was too late to make a valid application to the FTT under Rule 103 because of the clear definition of the date when the application is made as stated in Rule 5 (3) and of the time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011
7. It would not be appropriate for the Tribunal to accept an application has been made out of time. The application is thus rejected.

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.

Petra Hennig-Mcfatridge



Petra Hennig McFatridge

Legal Member

5 July 2021