



**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

Case reference FTS/HPC/PR/23/3693

Parties

Ms Serena Stocklose (Applicant)

Mr Brian Cathcart (Respondent)

167 Stonylee Road, Cumbernauld, G67 2LS (House)

1. The application dated 16.10.23 was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and received by the FTT on 17.10.23. This application also included references to another rule and various matters concerning the tenancy. Following correspondence with the FTT the applicant then

lodged a fresh replacement application on 6.11.23 under rule 103 alone, which is the application to which this decision relates.

2. The applicant provided no tenancy agreement and on the form did not state an address for the respondent, the amount of the order sought and did not provide a tenancy agreement.
3. On 10.11.23 the FTT wrote to the Applicant in the following terms: "Further to your response dated 6 November, a legal member of the Tribunal with delegated powers of the Chamber President has further considered the application and has determined that, although you have now provided a fresh application form in respect of the Rule 103 application (tenancy deposit scheme breach) the following information is still required in order that the application can progress:- 1. Please note that an address is required for the Respondent. If you do not have an address you should submit an application for service by advertisement using the form on the Tribunal website. This must be accompanied by a trace report from a Sheriff Officer. 2. Please advise when the tenancy ended (if it has ended) and provide any evidence of that, such as a copy of any notices/communications between yourself and the Respondent your former landlord confirming the date. 3. Full details of the tenancy which must include the start date, the amount of rent payable and the amount of the deposit (it is noted that you do not have a copy of the tenancy agreement itself from the Respondent). 4. Evidence that a deposit was paid, such as an extract of a bank statement or other document from your bank evidencing the amount, the date and the payee or, alternatively, any receipt/acknowledgement issued by the Respondent at that time. 5. Evidence demonstrating that your deposit was not lodged with an approved scheme. You may wish to contact the 3 approved scheme administrators in Scotland (you will find their details online), providing details of the tenancy and deposit you paid, and then lodge their responses with the Tribunal. Please respond as soon as possible. Please note that a completed application (with all the required supporting documentation) must be lodged within 3 months of the end of your tenancy and the Tribunal has no discretion to extend this time limit. Upon receipt of the above information, a decision can then be taken on whether the application is valid and whether it should be accepted and referred to the Tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application."
4. In previous correspondence, in particular on 25.10.23, the FTT had already asked the applicant for the address of the respondent and explained the process of applying for service by advertisement.
5. On 14.11.23 the applicant stated there were in fact two individuals with the same name and she was not sure which one was the landlord and asked the FTT how to proceed. She was advised that the Tribunal cannot give legal advice.
6. No address for the landlord or further information about the tenancy and no application for service by advertisement have been received.

DECISION

7. 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."

8. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

9. In terms of Rule 103 of the Procedural Rules an application under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 has to
- “(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***”
10. The applicant was asked repeatedly for either the respondent’s address or for an application for service by advertisement. She provided neither. She may have good reason why she is unable to provide the address but she also not provided any of the information regarding the tenancy and she has not provided an application for service by advertisement. The application is rejected because the applicant has not provided the necessary information for lodging the application although she had been asked to do so twice by the FTT.
11. It would not be appropriate for the FTT to accept an incomplete application that does not meet the lodging criteria. The application is thus rejected.
12. This does not prevent the applicant from lodging a fresh application when she is able to provide the necessary details and ancillary applications.

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.

P Hennig-McFatridge

Petra Hennig McFatridge

Legal Member

29 November 2023