

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Case reference FTS/HPC/PR/23/4196

Parties

Williamina Scotland (Applicant)
Courtney Hair (Applicant’s Representative)
Precious Kutamahufa (Respondent)

42/3 Muirhouse Park, Edinburgh, EH4 4RL (the Property)

Legal Member

Ruth O’Hare, with delegated powers from the Chamber President

Background

1. This application was made under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The application was incomplete. On 28th November 2023 the Tribunal wrote to the Applicant’s representative in the following terms:-

“Before a decision can be made, we need you to provide us with the following:

1. In the application boxes 7 b and 7 c can only be partially read and the entries both stop mid-sentence. Please provide the information in those boxes on a separate document as a paper apart.

2. Please provide the full addresses of the parties on the application, including the town/city.

3. Please provide written authorisation of the representative by the applicant to represent them before the Tribunal.

4. Please confirm whether the tenancy is still ongoing and if not, on which date the tenancy ended. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary

information/documentation within that time, regardless of any reply date stated on correspondence, otherwise the application will have to be rejected.

Please reply to this office with the necessary information by 12 December 2023. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Tribunal received no response. On 19 December 2023 the Tribunal emailed the Applicant’s representative again in the following terms:-

“We wrote to you on November and note that we have not yet had a response. We require a response in order to further consider your application and so can you please provide the following information:-

1. In the application boxes 7b and 7c can only be partially read and the entries both stop mid-sentence. Please provide the information in those boxes on a separate document as a paper apart.

2. Please provide the full addresses of the parties on the application, you appear to have not stated the town/city.

3. Please provide written authorisation by the applicant authorising you to represent them before the Tribunal. An email or copy of a hand written authorisation is fine.

4. Please confirm whether the tenancy is still ongoing and if not, on which date the tenancy ended. If the tenancy has now ended then please provide the new address for the Applicant. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, regardless of any reply date stated on correspondence, otherwise the application will have to be rejected.

Please let us have your response as soon as possible and no later than 10 days failing which your application may be rejected. Please reply to this office with the necessary information by 29 December 2023. If we do not hear from you within this time, the President may decide to reject the application.”

4. No further response was received from the Applicant nor her representative. The Tribunal wrote again to the Applicant’s representative on 5 January 2024 in the following terms:

“Your application has been further reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President.

It is noted that you have failed to provide the further information requested by emails dated 28 November 2023 and 19 December 2023. We now write to

advise you that if you fail to provide this information in response to this request the tribunal will have no option but to reject your application.

Please reply to this request by no later than 7 days. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, regardless of any reply date stated on correspondence, otherwise the application will have to be rejected.

You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations.

Please reply to this office with the necessary information by 12 January 2024. If we do not hear from you within this time, the President may decide to reject the application."

Decision

5. The circumstances in which an application is to be rejected are governed by 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."

6. After consideration of the application and the lack of any further correspondence from the Applicant or her representative, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

Reasons for Decision

7. The Applicant was given the opportunity to provide further information by way of the requests from the Tribunal on 28th November 2023, 19th December 2023 and 5 January 2024. As at the date of this decision there has been no further response from the Applicant nor her representative. This additional information requested was necessary to allow the application to proceed. The Applicant was warned on three occasions that failure to respond may lead to the application being rejected. In the absence of any response from the Applicant it would not be appropriate to accept the application and it should therefore be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Legal Member

17 January 2024