



**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/24/1930

**Parties**

**Helen Louise Robertson (Applicant)**  
**Jill Cullen, Ian Cullen (Respondent)**

**7 Nile Street, Kirkcaldy, KY2 5AX (House)**

1. By application received on 26 April 2024 the Applicant sought a payment order under Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 as a result of the Respondents’ failure to lodge her tenancy deposit with a tenancy deposit scheme. The application was made under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 1 May 2024 the Tribunal wrote to the Applicant in the following terms:-

*“ 1.The Notice to leave states that the landlord intends to live in the let property. You indicate that you believe that the landlord has moved. Please confirm if you wish the property address to be used as the landlords address. Please note that a current address must be provided or an application for service advertisement with a trace report from a Sheriff Officer.*

*2.As you cannot provide a copy of the tenancy please provide information about it – the start date, the amount of rent –and evidence of payment of the deposit if this is available Please note that application under Rule 103 must be lodged with all required information and documents no later than 3 months after the tenancy has ended.*

*The documents lodged indicate that the tenancy ended on 9 February. If so, your full response must be received no later than 8 May 2024.”*
3. The Tribunal received no response from the Applicant.
4. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “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”.

5. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form and in the absence of any further information from the Applicant.
6. Regulation 9(2) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 states that an application under Regulation 9 must be made no later than 3 months after the tenancy has ended. The Tribunal must receive a complete application before the expiry of that period. In this case the Applicant had failed to provide the information requested as required by Rule 103, namely a copy of the tenancy agreement or as much information about the tenancy as the Applicant can give. Based on the information provided by the Applicant the tenancy ended on 9 February 2024. The deadline for submitting a complete application was therefore 9 May 2024. The Applicant was advised of this in the Tribunal’s email of 1 May 2024. On that basis the application cannot be made timeously under Regulation 9(2) and therefore has no reasonable prospects of success.

**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.

**Ruth O’Hare, Legal Member**  
**10 May 2024**