



DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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")

Case Reference: FTS/HPC/PR/24/1986

01/59 Cornalee Gardens, Glasgow, G537EW ("the Property")

Okonosa Paulen ("the Applicant")

GG-629-879 ("the Respondent")

1. The Applicant lodged an application under Rule 103 of the Procedure Rules (application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits) in terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"), received by the Tribunal on 1 May 2024.
2. The application was considered by a Legal Member of the Tribunal acting under delegated powers from the Chamber President under Rule 9 of the Procedure Rules. An information request was sent by email to the Applicant on 3 May 2024 advising of numerous issues with the application which was incomplete, including that no details were provided of the Respondent; that the tenancy address stated appeared to be erroneous; that no evidence of a tenancy nor the payment of a deposit, nor any evidence from the tenancy deposit schemes that a deposit had not been lodged with them had been produced; and that there was no detail as to whether the tenancy was ongoing, had ended and, if so, the date it had ended. It was explained that such an application can be time-barred if it is submitted outwith the 3-month period after a tenancy had ended, in terms of Regulation 9(2) of the 2011 Regulations and it was recommended that the Applicant obtain independent advice in respect of the application as soon as possible.
3. On 21 May 2024, the Applicant telephoned the Tribunal Administration and requested a copy of the email dated 3 May 2024 which was emailed to her that day. On 24 May 2024, the Tribunal emailed the Applicant a reminder in respect of the information request dated 3 May 2024. She responded on 4 June 2024

by email, explaining that she did not have a tenancy agreement and producing proof of two payments made to the Respondent on 24 and 25 November 2023. The other information requested was not provided by the Applicant. The application was again considered by a Legal Member of the Tribunal acting under delegated powers from the Chamber President under Rule 9 of the Procedure Rules and a detailed email sent to the Applicant on 10 June 2024 explaining the matters still outstanding. No further response was received from the Applicant and a further reminder issued to her by email on 21 June 2024 regarding her failure to respond and providing a final period of 14 days, failing which she was advised that the application would likely require to be rejected. That time limit has now expired and there has been no further response from the Applicant.

Decision

4. Following further consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

5. Rule 5 of the Procedure 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. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
6. The Applicant has failed to meet the mandatory requirements for lodgement. These requirements have been explained to the Applicant who has been given several opportunities to provide any documentation required or clarify the position. However she has failed to do so. Email communications to the Applicant made it clear that, in the absence of a response, the application was at risk of being time-barred and may be rejected.
7. The Applicant has failed to comply with Rules 5 and 103 of the Procedure Rules and with Regulation 9(2) of the 2011 Regulations. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application 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.

Nicola Weir

Legal Member
11 July 2024