



**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/24/2497

Parties

Mr Olubenga Ayeni (Applicant)
Belvoir Lettings (Respondent)

3/R 242 Clepington Road, Dundee, DD3 8BJ (House)

1. On 30.05.24 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application from the Applicant. The application was made under Rule 103 of the Rules of Procedure. The application was directed against the Letting Agent Belvoir Lettings. The Applicant did not submit a tenancy agreement or any other documents with the application and asked for the deposit to be returned. He stated that he moved out of the property on 6.3.24.
2. On 4.6.24 the FTT wrote to the Applicant and advised him that an application in terms of rule 103 can only be made against the landlord, that it is not an application for the return of the deposit and that the Applicant may wish to consider raising an application under rule 111 if his intention was to make a claim for the re-payment of the deposit rather than the issue of a non compliance with the lodging requirements.

It gave the Applicant the opportunity to amend the application accordingly. A reply was requested by 30.06.24. No reply was received. A further request for a reply was sent on 27.6.24 with a reply deadline of 11.7.24. No reply was received.

3. All documents are referred to for their terms and 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

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.”

Regulation 10

If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (a) (iii) of the Procedural Rules states that such an application must state the name, address and registration number (if any) of the landlord. Regulation 10 makes it clear that an application of this nature can only be directed against a landlord. It was made clear in the application that the name and address provided were those of the former Letting Agent and not of the landlord.

2. The application remains incomplete as it does not provide the details of the landlord. It is directed against the wrong Respondent. It does not provide the landlord registration details and it was not accompanied by a tenancy agreement or information regarding the tenancy. In terms of rule 5 (3) of the Procedure Rules an application “is held to be made on the date that the First-tier Tribunal receives the last of the outstanding documents necessary to meet the required manner for lodging”. The requested information has still not been received.
3. The end date of the tenancy was stated as 6.3.24. At the date of the decision the 3 months time period within which an application under rule 103 can be made has expired and thus the application cannot now be lodged competently.
4. It would not be appropriate for the FTT to accept an application in those circumstances.

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-McFatrige

Petra Hennig McFatrige
Legal Member
16 July 2024