



**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/24/2765

Parties

Mr Charles Munonye (Applicant)

Olusesan Adebisi, Oyeronke Adebisi (Respondent)

Mrs Ogechi Munonye (Applicant's Representative)

Mr Wesley Wonwu (Respondent's Representative)

74 Ivanhoe Road, Aberdeen, AB10 7EY (House)

1. The application form was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 18 June 2024. The application was made under Rule 103 of the Procedural Rules under Regulation 9 of The Tenancy Deposit Schemes (Scotland)

Regulations 2011.

2. The applicant provided a Tenant Leasing Application Form and a document showing the transfer of £400 to a third party. No details of the Respondent were provided.
3. On 20 June 2024 the FTT wrote to the Applicant asking to confirm the Respondent details and the exact end date of the tenancy and informing the applicant that an application of this nature had to be directed against the landlord and not the letting agent and informing the applicant that the deposit return would have to be dealt with by a different kind of application in terms of rule 111.
4. On 22 June 2024 the applicant replied the case should proceed against the landlords' agent and confirmed the date of the end of the tenancy as 30 April 2024.
5. On 25 June 2024 the FTT wrote to the applicant again confirming that the application can only be made against a landlord and pointing out the possibility of service by advertisement and set out the requirements for this.
6. On 17 July 2024 the applicant wrote that they are unable to trace the landlord as she resides outwith Aberdeen and asked for service by advertisement without including the necessary form.
7. On 19 July 2024 the FTT wrote to the applicant with a form for service by advertisement and the following instruction: Please provide a completed service by advertisement application form which may be downloaded from the Tribunal website. This must detail attempts you have made to trace the landlords such as a trace report from sheriff officers. Please note that an application under rule 103 requires to be submitted and accepted within a period of 3 months after the tenancy ended. Please therefore respond as soon as possible. Please provide the information requested within 7 days or your application may be rejected.
8. The applicant sent in an amended application which again shows the address of the property as the address of the landlords and states that this is the contact point for the landlord.
9. The FTT replied on 23 July 2024 again clarifying that the address has to be the address of the Respondent and that a contact point is not sufficient. The applicant was again asked to provide either the Respondent's address or an application for service by advertisement together with a negative trace report.
10. On the same day the applicant provided an application for service by advertisement but no negative trace report and stated on the application that the applicant had asked the house agent for the address on several occasions and was informed that the Respondent resides in Edinburgh but often stays outside the UK. The application did not specify the address in Edinburgh.
11. On 24 July 2024 the FTT wrote a last time to say that a negative trace report or the proper address has to be provided by the end of the 3 months period otherwise the application will have to be rejected.
12. No further reply was received.

DECISION

13. 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."

14. 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

15. 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***”

16. In terms of regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “an application under paragraph (1) must.....be made no later than 3 months after the tenancy has ended”.

17. In terms of rule 5 of the Procedural Rules (Requirements for making an application)

“5.—(1) 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 rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this is the application and complete a request for service by advertisement in accordance with paragraph (5).

..... “

18. The application is rejected because the applicant has not provided the necessary

information for lodging the application within 3 months in terms of Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011. The tenancy end is stated as 30 April 2024. Although the application reached the FTT on 18 June 2024 and after repeated correspondence also included the name of the landlord, no respondent address details were provided as required in terms of Rule 103 (a) (iii) of the Procedural Rules. In terms of Rule 5 (1) of the Procedural Rules an application is only held to have been made on the date it was received if at that time it was made in accordance with the relevant provisions in the applicable rule. The application does not meet these requirements. The statement of the address of the property as the Respondents' address is clearly insufficient because the information from the applicant is that the Respondents reside in Edinburgh and that the property is only what they describe as "a contact point".

19. An application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made within 3 months of the end of the tenancy. As at 2 August 2024 the application is not validly made. The application remains incomplete on the day the 3 months period for making an application under rule 103 expired. The application cannot now be validly made within 3 months of the date of the end of the tenancy. The address of landlord remains outstanding.
20. In making this decision, I have specifically considered the recent Upper Tribunal decision UTA/AP/22/0015, which dealt with the issue of time bar. In that case all necessary information had been provided when the application was first lodged and the UT held that "[12] The application may have been rejected on the basis that it was not made within the time limit stipulated in rule 9 of the 2011 regulations. The basis upon which it can be said that this in turn automatically renders the application frivolous is not immediately apparent. It may have been more appropriate to reject the application – if that were a sound basis for so doing – on the basis of invoking rule 8(1)(c) - that there was good reason to believe that it would not be appropriate to accept the application. A good reason may be in circumstances that the time limit has not been complied with and therefore the application is not competently before the FtT." I consider in this case that since the application did not even name the Respondents when the application was first made, it was not a valid application when it was first received. Since the up to date landlord address has still not been provided, the application remains incomplete at a time when the 3 months period has expired.
21. The applicant had been advised on several occasions of the option of providing an application for service by advertisement together with a negative trace report so that

the FTT could consider the matter under rule 6A. However, despite several requests, the applicant did not provide a negative trace report. The FTT considers that the efforts made by the applicant to establish the address of the Respondents were clearly insufficient to grant such a request. The applicant had known that the Respondents reside in Edinburgh when the application still rented the property. The applicant could have instructed a trace report or made other relevant enquiries but did not do so. It is the responsibility of the applicant to provide a complete application including the Respondents' address or to evidence that proper enquiries had been made and were unsuccessful. This was not the case here. Therefore the application remains incomplete after the expiry of the 3 months period.

22. It would not be appropriate for the FTT to accept an application that is made out with the statutory time frame stated in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 or to accept an incomplete application that does not meet the lodging criteria. The application is thus rejected.

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

2 August 2024