



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of an application by Miss Lynne Allen in terms of rule 109 of the Rules.

Tribunal Reference FTS/HPC/PR/24/3347

At Glasgow on the 16 September 2024, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (c) of the Rules.

1. This is an application by Miss Lynne Allen in terms of rule 103 of the Rules, in respect of a tenancy deposit.
2. The application was dated 18 July 2024 and received by the Tribunal on 24 July 2024.
3. The in-house convenor reviewed the application and the Tribunal sent a request for further information on 1 August 2024 as follows:

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

(1) You cannot make a Rule 103 application against the letting agent. It must be made against the landlord, who is named in the tenancy agreement. Please amend the application form to show the correct Respondent, with a residential address. The Title Deed shows the owner of the property as DUNCAN MACDONALD HUTCHISON 9 Wellpark Place, Kilmarnock, KA3 7DJ. This address information may now be out of date, so you must ensure that we have the correct address. You may wish to ask the letting agent for this information. If you are unable to provide the correct address, you may wish to consider making an application for Service by Advertisement, which must be accompanied by a negative tracing report from a tracing agency or sheriff officer.

(2) Please provide a clear explanation as to why you feel there is a legal basis for your application. Please do not just refer us back to the emails lodged by you – you must explain the basis of the application and why you believe the landlord has failed to comply with the Regulations in respect of the tenancy deposit. We cannot be expected to draw conclusions from the documents at this stage without any such explanation.

(3) Please be aware that a complete Rule 103 application must be made within 3 months of the end date of the tenancy. It would appear that the tenancy has not ended in this case

4. The applicant responded on 14 August 2024, stating that as far as she was concerned her contract was with the letting agent. She did not submit an amended application.
5. The in-house convenor reviewed the application again and the Tribunal wrote to the applicant on 27 August 2024 as follows:

Regardless of what information you have been given, the legislation clearly states that the application under rule 103 can ONLY be made against a landlord and not against a letting agent (regulation 9” an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit”, regulation 10: “ (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit “). If you wish to pursue this you must change the application from being directed against the Letting Agent to being directed against the landlord or it has to be rejected as an incompetent application.

Please provide the amendment of the application and ensure you enter not just the landlord’s name but also the up to date address for the landlord.

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 10 September 2024. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

6. The applicant has not responded.
7. Rule 8(1)(c) of the Tribunal Rules requires the President to reject an application if they have good reason to believe it would not be appropriate to accept it. I consider I have good reason to believe it would not be appropriate to accept this application. An application to recover a tenancy deposit cannot succeed against a letting agent. Further, the applicant has failed to respond to the Tribunal’s request for information of 1 August 2024. The applicant has therefore failed to cooperate with the Tribunal in the execution of its duties. It is open to the applicant to make a new application with the correct parties.

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.

Lesley Anne Ward

Lesley Anne Ward

Legal Member