



**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/24/3421

**Parties**

**Miss Allison Bradford (Applicant)**

**Southside Housing Association (Respondent)**

**Flat 1/1, 390 Tantallon Road, Glasgow, G41 3HR (House)**

1. The application form dated 10 July 2024 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 29 July 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 the tenancy agreement with her original landlord (the Respondent), a document dated 22 August 2023 advising her of the transfer the tenancy to the new landlord on 1 October 2023, the Deposit Protection Certificate from Safe

Deposits Scotland.

3. On 31 July 2024 the FTT wrote to the Applicant in the following terms: Your application is dated 10 July 2024. In terms of the application you seek compensation for a landlord's failure to lodge a tenancy deposit in an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011. You state that the tenancy came to an end in October 2023. In terms of regulation 9 of the 2011 Regulations an application under that regulation must be made no later than 3 months after the tenancy has ended. An application made in July 2024 is therefore too late. The wording of Regulation 9 is such that the Tribunal has no discretion to entertain an application made later than 3 months after the end of the tenancy. Please provide your submission as to why the Tribunal should entertain the application outwith the timescales prescribed by the Regulations or confirm that your application is withdrawn.
4. The Applicant wrote on the same day: I would ask that the tribunal consider my application outwith the timescales because I had no knowledge that my deposit was not registered by Southside housing until my tenancy ended with them until recently. I became aware of this following receiving a letter from my current landlord Clyde Valley lets around beginning of June 2024 who informed me that they did not have any record of a deposit under my address. I assumed (wrongly I now realise) that when Southside ended my tenancy agreement, my deposit would automatically be transferred to Clyde Valley. I started to make enquiries with the three deposit schemes who all initially stated they had no record of it. I then telephoned Southside housing who said Safety deposit Scotland had it. I then telephoned Safety deposit Scotland who apologised to me saying they made an error and indeed they had my deposit but confirmed that it was not registered until November 2023 (2 years after my tenancy started with Southside and paying my deposit). They also informed me that I should've received confirmation in a certificate of my deposit within 30 days of me paying this to Southside. I did not realise this. The above explanation is the reason why my application was sent well over the timescale.

## **DECISION**

5. 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."*

6. 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**

7. 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”
8. 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”.
9. The application is rejected because the application was not made 3 months of the end of the relevant tenancy in terms of Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011. The tenancy end is stated as 1 October 2023. The Applicant was aware of the change in landlord from August 2023 onwards and knew her tenancy would end with the previous landlord.
10. 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. 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 was made more than 9 months after the original tenancy with the Respondent ended, the application was made well outwith the time limit set in legislation. The legislation does not provide an exemption in terms of the Applicant’s explanation and specifically sets the end date for applications 3 months after the end of the tenancy and not 3 months after the circumstances leading to the problem with the deposit coming to the attention of the Applicant.
11. The Applicant should, however, be aware, that the time limit only applies to applications

under rule 103 and not to other types of applications including those made under rule 111 for return of a deposit.

12. 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**

Petra Hennig McFatridge

Legal Member

2 August 2024