



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/PR/24/3585

Parties

Shashank Yadav (Applicant)

Bruno Terlecki (Respondent)

190 Piper Drive, Glenrothes, KY7 6TG (House)

1. By application received by the Tribunal on 7 August 2024 the Applicant sought an order against the Respondent under Regulation 9 of the Tenancy Deposit (Scotland) Regulations 2011. The application was made under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. Following receipt of the application the Tribunal wrote to the Applicant by email advising that applications under Rule 103 required to be made within three months of the tenancy ending. On the basis that the Applicant had stated that the tenancy ended in October 2023, it appeared that the application was time barred. The Tribunal asked the Applicant to either withdraw the application or explain the legal basis on which the application could proceed. The Applicant responded by email dated 28 August 2024 stating that he had experienced mental health disabilities at the time which had severely affected his ability to take action against the Respondent, who he explained had been manipulative and abusive, and The Applicant had been put on medication. He asked for an extension of the three month deadline.
3. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall) Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic”.
4. I consider that this application is frivolous and has no reasonable prospect of success. Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 states:-

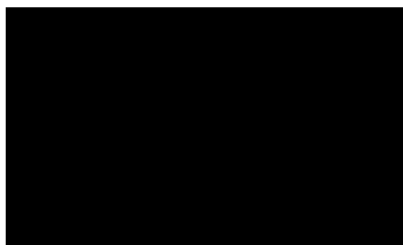
“(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

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

5. The Applicant states in his application that he left the property on 31st October 2023. Accordingly his application would require to have been lodged no later than 31st January 2024. There is no provision in the 2011 Regulations that permits the Tribunal to allow an extension to the 3 month deadline for submission of an application under Regulation 9. Accordingly, whilst I have sympathy for the Applicant’s circumstances in respect of his mental health and alleged treatment by the Respondent, the Tribunal has no discretion in this matter. The application cannot be entertained as it does not comply with Regulation 9 and therefore must be rejected.

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.



Ruth O’Hare, Legal Member
4 September 2024