

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/3060

Parties

Kellie Murray (Applicant)
Susan Owen (Respondent)

68 Blacklaw Road, Dunfermline, Fife, KY11 4AP (House)

1. By application received by the Tribunal on 5 July 2024 the Applicant sought an order against the Respondent under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). In summary the Applicant stated that her tenancy deposit had been returned to the Respondent by MyDepositsScotland. The Applicant had not been contacted in advance of this due to the Respondent having given MyDepositsScotland the wrong telephone number for the Applicant.

2. On 11 July 2024 the Tribunal wrote to the Applicant in the following terms:-

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

- The full address of the respondent including the town;*
- a copy of the tenant agreement (if available) or as much information about the tenancy as the tenant/former tenant can give; and*
- evidence of the date of the end of the tenancy (if available).*

Please reply to this office with the necessary information by 25 July 2024. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Tribunal received no response from the Applicant. On 31 July 2024 the Tribunal wrote again to the Applicant by email in the following terms:-

“You have not responded to our repeated requests for further information, which were sent to the email address provided in the application form. Please now consider the following and provide the requested information and documentation:

1. A Rule 103 application is only applicable where the deposit has not been protected in a tenancy deposit scheme. That does not appear to be the case here. If you intend to make an application under Rule 111 for return of the tenancy deposit, please confirm that is the case.

2. The Tribunal does not have jurisdiction to consider the application if adjudication was carried out by the approved tenancy deposit scheme. Please confirm that no adjudication was carried out. You may wish to provide any information or documentation received from the tenancy deposit scheme.

3. Please amend the application form to show at part 5(c) the exact sum sought.

4. Please provide an address for the Respondent. Landlord registration states the address as 14 Craigmount Bank West, Edinburgh, EH4 8HG. If you are unable to confirm this is the correct address or provide an alternative address, you may wish to consider an application for Service by Advertisement, however, any such application must be accompanied by a negative tracing report from a Sheriff Officer or tracing agency.

5. Please provide a copy of the tenancy agreement or as much information as you are able to provide about the terms of the tenancy.

6. If you no longer wish to progress the application, please confirm that you are withdrawing it.

Please reply to this office with the necessary information by 14 August 2024. If we do not hear from you within this time, the President may decide to reject the application.”

4. Again the Tribunal received no response from the Applicant. On 22 August 2024 the Tribunal wrote again to the Applicant by post requesting a response to the previous requests for information. The Applicant did not respond.
5. Rule 8(1)(c) of the Rules allows an application to be rejected by the Chamber President if “they have good reason to believe that it would not be appropriate to accept the application”. The Applicant has been asked to provide the evidence required under Rule 103. The Applicant has also been asked to clarify the nature of her application as it does not appear to be a competent application under Rule 103 based on the information provided. The Applicant has been asked for the information on three occasions and has been made aware of the consequence of a failure to respond. It is not possible at present to determine, on the basis of the information provided, whether the application can be entertained by the Tribunal under Rule 103 and Rule 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011. Accordingly in the absence of any further information from the Applicant it would not be appropriate to accept the application and the application 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
16 September 2024