

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/24/4027

Parties

Runlin Li (Applicant)

Edinburgh University Students Association Advice Place (“the Applicant’s Representative”)

Magid Shabestary (Respondent)

Flat 1, 8 Priestfield Road, Edinburgh, EH16 5HH (House)

1. By application received by the Tribunal on 28 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 Rules of Procedure 2017 (“the Rules”).
2. Following receipt of the application the Tribunal wrote to the Applicant’s representative by email on 4 September 2024 in the following terms:-

“Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following:

1. A Rule 103 application must be made within 3 months of the end date of the tenancy. The tenancy appears to have ended on 26th May 2024, and the application was made on 28th August 2024. If this is correct, the application is time-barred and the Tribunal has no discretion to accept a late application. Please consider withdrawing the application.

You should also be aware of the following:

A Rule 103 application must include the address of the landlord. In this case, you have stated the landlord’s address is the same as the property which you rented. If the landlord also lived at the property, this may affect whether the tenancy comes within the tenancy deposit regulations. If the landlord does not live at the property, we would require their residential address.

Please reply to this office with the necessary information by 18 September 2024. If we do not hear from you within this time, the President may decide to reject the application.

There was no response from the Applicant's representative.

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, having regard to the provisions of the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"). In particular, regulation 9 of the 2011 Regulations 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 has produced email correspondence which confirms that the tenancy between the parties ended on 26th May 2024. In terms of Regulation 9, the deadline for lodging an application under the 2011 Regulations would have been 26 August 2024. Whilst the application was received only two days after that deadline, there is no provision in the 2011 Regulations that permits the Tribunal to allow any extension. Accordingly, the application has no reasonable prospect of success and 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

**Ruth O'Hare, Legal Member
2 October 2024**