



**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/24/4895

**Parties**

**Mr Matthias Gisder (Applicant)**  
**Mrs Gaynor Crawford (Respondent)**

**41A Wallace Street, Stirling, FK8 1NU (House)**

1. On 22.10.24 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application from the Applicant under Rule 103 of the Rules of Procedure. The Application was lodged including a copy of a Notice to Leave, a partial tenancy agreement (2 pages of a clearly larger document) and stated as the date rent was paid up to, having received a Notice to Leave to 31.7.24, 22.7.24. An email from the landlord requesting rent to 22.7.24 was also attached.
2. The Applicant gave his address as c/o another name under the address he stated he moved out of.
3. On 25.10 24 the Tribunal wrote to the Applicant in the following terms: 1. You have provided your address in both applications as care of Stroma Sutton, at the tenancy address but it is noted from your applications that you moved out of the property in July 2024. The Tribunal requires your current residential address to be stated in the application as a 'care of address is not sufficient. Please amend both applications and re-submit, with your address details shown. 2. Please confirm who Stroma Sutton is. It is assumed that she may have been

living at the tenancy at the same time as you but she is not mentioned in the tenancy agreement so the position is unclear. 3. Please provide a copy of the full tenancy agreement or confirmation that what you have lodged is the full tenancy agreement. 4. In relation to the Rule 103 application, please provide proof that the deposit has not been lodged with any of the three tenancy deposit schemes. You can obtain this information online from each of the three schemes. 5. Please note that an application under rule 103 must be made within three months of the tenancy end date. The Tribunal must receive a properly completed application prior to the three month deadline and has no discretion to accept such an application outwith that period. If the end date is 31 July 2024, the information requested above must be received and the application accepted by 31 October 2024. There is also the possibility that the end date could be taken to be the date you state you vacated, 22 July 2024, in which case your application has been submitted outwith the three month deadline. There is no such time limit applicable in relation to the Rule 111 application.

4. No reply was received. The Tribunal wrote again on 18.11.24. Again no reply was received.
5. All documents are referred to for their terms and held to be incorporated herein.

## **B DECISION**

1. 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."*

- 2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

## **C RELEVANT LEGISLATION**

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

**103.** Where a tenant or former tenant makes an application under regulation 9 ( **[F65**First-tier Tribunal orders]) of the 2011 Regulations, the application must—

(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;

(b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c)evidence of the date of the end of the tenancy (if available); and

(d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. ....

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 no later than 3 months after the tenancy has ended.”

S 50 Private Housing (Tenancies) (Scotland) Act 2016:

Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord, and

(b) the tenant has ceased to occupy the let property.

## **D REASONS FOR DECISION**

1. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 no later than 3 months after the tenancy has ended.” Regulation 10 then states: “If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit...”
2. The Applicant states he received a Notice to Leave and rent was paid up to 22.7.24. This indicates that he moved out in reaction to the Notice to Leave, which would then constitute the end of the tenancy in terms of S 50 (1) of the Private Housing (Tenancies) (Scotland) Act 2016. Thus the period of 3 months within which the application can be lodged started on that day and ended on 22.10.24. In terms of Rule 5 (3) of the Procedural Rules “the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.”
3. The application form was lodged initially 22.10.24 but at that point was clearly not competent as the tenancy agreement was only provided in part and the current address of the Applicant was not provided. The application still is incomplete at

the date of this decision as the full tenancy agreement was still not provided and the Applicant did not provide the current address. The FTT asked for further information and no reply has been received. By the time the 3 months period for lodging a competent application ended the application remains incomplete. Thus a valid application under the legislation can no longer be made.

4. It would not be appropriate for the Tribunal to accept an application which is made out with the 3 months time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
5. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: “ [1] *The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and subordinate legislation in the form of regulations made by the Scottish Ministers.* In UT60 [2019] Sheriff Di Emidio states at paragraph 14: “*It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT’s decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant.*”
6. The application thus has to be 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.**

**Petra Hennig McFatrige**

Petra Hennig McFatrige  
Legal Member

6 December 2024