



**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/24/5443

**Parties**

**Miss Haleema Abdul Ghafoor (Applicant)**

**Mr Abeer Ahmad (Respondent)**

**16 Blackburn Street, Glasgow, G51 1EL (House)**

1. The application dated 22.11.24 was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The applicant stated they wished the return of their deposit of £600 because this had not been lodged with a deposit scheme and, although they had moved out 14 days

previously, had not been repaid. The applicant provided an email exchange supporting the move out date of 12.11.24 and a calculation for the deposit balance to be returned. The applicant also provided evidence the deposit had not been lodged with a scheme. The email exchange referred to a lodger agreement.

3. On 28.11.24 the FTT wrote to the applicant in the following terms: 1. Please provide a copy of the tenancy agreement. 2. You have stated that the landlord's address is the same as the Property. Does the landlord live in the Property and did he live in it when you were resident. 3. Your application is in respect of a landlord's alleged failure to protect a tenancy deposit. The Tribunal cannot order repayment of the deposit in this type of application. If you wish to seek repayment of the deposit please lodge a separate application under Rule 111.
4. The applicant then provided a Lodger Agreement and confirmed that the property for which the deposit was paid was a spare room in the landlord's house.

## 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 regulation 3 (3) of The Tenancy Deposit Schemes (Scotland) Regulations 2011  
“(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—  
(a)in respect of which the landlord is a relevant person; and  
(b)by virtue of which a house is occupied by an unconnected person,  
unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.
8. In terms of section 83 (6) of the Antisocial Behaviour etc. (Scotland) Act 2004 a tenancy is described as an excluded tenancy amongst other examples:  
(6)For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if— .... (e)the house is the only or main residence of the relevant person;
9. The application is rejected because the agreement lodged with the application clearly disclosed that the Respondent resided at the property as the main householder at the time the Applicant lived at the property and the application information shows that the Respondent continues to reside there as the property address is stated as the proper

address for the Respondent on the application.

10. An application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made with regard to a qualifying tenancy as described in Regulation 3(3). A situation where the property in question is also the residence of the person who otherwise would be considered the relevant person to register as a landlord is specifically excluded as a relevant tenancy in terms of section 83 (6) (e) of the Antisocial Behaviour etc. (Scotland) Act 2004 and thus the documentation lodged with the application and the description of the Respondent in the application indicate that the arrangement in question is not a qualifying tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
11. It would not be appropriate for the FTT to accept an application to which the Regulations do not apply because it would not have jurisdiction to deal with an application under Rule 103 and Regulation 9 of the said Tenancy Deposit Schemes (Scotland) Regulations 2011 if the underlying agreement does not constitute a qualifying tenancy in terms of Regulation 3 (3).
12. As previously stated, if the applicant wishes to have the repayment of the deposit considered, this would require a different and separate application under the relevant rule 111.

### **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  
Legal Member

10 December 2024