

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/PR/24/4384

10 Clarinda Terrace, Edinburgh, EH16 6XN ("the Property")

Parties:

**Chloe McGuire, Nelly Oresharova, Sasha Christie, Urszula King ("Applicant")
Afshin Ansar Dezfouli ("Respondent")**

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the Applicant received by it on 16 September 2024 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

Background

- 1 On 16 September 2024 the Applicants submitted an application to the Tribunal by email under Rule 103 of the Rules. The Applicants sought a payment order against the Respondent as a result of the Respondent's alleged failure to lodge their tenancy deposit with an approved deposit scheme.
- 2 On 24 September 2024 the Tribunal wrote to the lead Applicant, Chloe McGuire, in the following terms:-

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

1. It is noted that you have submitted four applications and that it is intended that one application relates to each of the four tenants. However, all four applications name you as the Applicant. The four separate Applicants should each be named in one of the four applications. If the four Applicants, however, wish to appoint you to deal with their applications on their behalf, they should sign a written mandate in your favour, authorising this. Alternatively, you can incorporate all four Applicants into a single application form by adding a paper apart containing the details of the other three. For the avoidance of doubt, whichever method you choose, the tribunal will deal with this as a single application for practical reasons.

Please amend the application(s) accordingly and re-submit to the Tribunal as soon as possible.

2. At Section 7 of the application(s), you should add in details of how much compensation you consider should be awarded and why (the maximum is three times the tenancy deposit).

3. Please confirm that the tenancy is now at an end and the date it ended. Please note that there is a three-month time limit from the end of the tenancy for this type of application to be made (by which is meant a complete, valid application). Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk

4. It is noted that the tenancy deposit specifies the total deposit of £2,400 (£600 each). However, the proof of payment of the deposit is only for a sum of £1,800 which you state is for three deposits. Please clarify the reason for this?

5. The proof of payment does not specify the date it was made or any other details, such as the account to which it was going. Please obtain a more detailed proof of payment from the bank concerned and submit this to the Tribunal.

6. Please provide evidence that the deposit is/was not lodged with any of the three deposit schemes. You can obtain this proof online from each of the tenancy deposit schemes.

Please respond as soon as possible as there is a strict 3 month time limit following the end date of the tenancy for a completed/valid application to be submitted to the Tribunal and the Tribunal has no discretion to accept an application out with that time limit.

Please reply to this office with the necessary information by 4 October 2024. If we do not hear from you within this time, the President may decide to reject the application.”

3 The lead Applicant did not respond. On 5 November 2024 the Tribunal wrote again to the lead Applicant in the following terms:-

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

1. Either withdraw the application if it is no longer required.

2. Or provide the following information: confirmation that the tenancy is ongoing or the end date of the tenancy. Evidence that the deposit is not lodged. An explanation why the proof of payment only relates to 3 deposit payments. Details (including the current postal address) of all 4 applicants on a paper apart so that all 4 individuals are stated as the applicants.

Should this not become available within 14 days the application will have to be rejected as incomplete and a rejection decision will be published on the public register. Please note that the date the application is held to be made is the date

the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, regardless of any reply date stated on correspondence, otherwise the application will have to be rejected.

Please reply to this office with the necessary information by 19 November 2024. If we do not hear from you within this time, the President may decide to reject the application.”

- 4 Again, the lead Applicant did not respond. On 5 December 2024 the Tribunal wrote again to her in the following terms:-

“A Legal Member of the Tribunal with delegated powers of the President has considered your application and notes that you have failed to respond to two requests for information.

According to the tenancy agreement you have submitted, the tenancy started on 1 September 2024. You submitted the application two weeks later. However, the landlord has 30 working days to lodge the deposit and this time had not elapsed.

If you wish the application to continue, you should confirm that the tenancy deposit was not ledged within the statutory timescale. If possible you should provide evidence of this.

Please also note that the application can only proceed in your name at this stage as you have failed to provide addresses for the other three tenants and this is a mandatory requirement. They are also not named in the application. You must also confirm if the tenancy is ongoing or confirm the end date

You are reminded that the application with all required information must be submitted no later than 3 months after the tenancy has ended or it will be time barred.

Please reply to this office with the necessary information by 19 December 2024. If we do not hear from you within this time, the President may decide to reject the application.”

- 5 The Tribunal received no further response from the lead Applicant.

Reasons for Decision

- 6 The Legal Member considered the application in terms of the Rules and determined that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicants have failed to provide the information requested by the Tribunal under Rule 5(3) of the Rules which is necessary to

meet the required manner for lodgement. The lead Applicant has been asked for the information on three occasions. The lead Applicant has been warned that a failure to provide the information may result in the application being rejected. Accordingly the Legal Member has concluded that the application cannot be accepted in its current form and must be rejected under Rule 8(1)(c).

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: A party 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
10 January 2025