



DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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 Procedure Rules")

Case Reference: FTS/HPC/PR/24/5428

148/16 Commercial Street, Edinburgh, EH6 6LB ("the Property")

Jack Thomas Moss ("the Applicant")

Philip Connolly ("the Respondent")

1. The Applicant lodged an application under Rule 103 of the Procedure Rules (application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits) in terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") This was received by the Tribunal on 25 November 2024, together with a second application under Rule 103 (reference FTS/HPC/PR/24/5430).
2. Both applications were considered by a Legal Member of the Tribunal acting under delegated powers from the Chamber President under Rule 9 of the Procedure Rules. A detailed further information request was sent by email to the Applicant on 27 November 2024 advising of several issues in respect of both applications. This application was incomplete and further supporting documentation was requested, in that no tenancy agreement or evidence of the existence of a tenancy had been produced, nor evidence showing that a deposit was paid, nor any evidence from the three tenancy deposit schemes showing that a deposit had not been lodged with them. In addition, clarification as to the amount of compensation that the Applicant was seeking in terms of this application was required, as well as confirmation as to the date the tenancy had ended. It was explained that such an application can be time-barred if it is submitted outwith the 3-month period after a tenancy had ended, in terms of Regulation 9(2) of the 2011 Regulations and it was recommended that the Applicant obtain independent advice in respect of the application as soon as possible. The Applicant was requested to respond by 11 December 2024.

3. No response was received by 11 December 2024. Both applications were reconsidered by another Legal Member who sent a further information request, summarising what was required in respect of each application and requesting a response by 30 December 2024. Again no response was received by that date and a final reminder was issued to the Applicant dated 10 January 2025, requesting a response by 24 January 2025, failing which the applications were likely to be rejected.
4. That time limit has now expired and there has been no response from the Applicant.

Decision

5. Following further consideration of the application, the Legal Member considers 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.”

Reasons for Decision

6. Rule 5 of the Procedure Rules states that 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...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
7. The Applicant has failed to meet the mandatory requirements for lodgement. These requirements have been explained to the Applicant who has been given several opportunities to provide the documentation required and to clarify the position. However, he has failed to do so. All communications to the Applicant were by email to the email address stated in his application and made it clear that, in the absence of a response, this application was at risk of being time-barred and may be rejected.
8. The Applicant has failed to comply with Rules 5 and 103 of the Procedure Rules and to provide information required to satisfy the Tribunal, on application, that Regulation 9(2) of the 2011 Regulations had been complied with. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. This application is rejected on that basis.

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.

Nicola Weir

Nicola Weir, Legal Member
4 February 2025