



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Charles Henderson and Rhona Barbour in terms of rule 103 of the Rules.

Case reference FTS/HPC/PR/25/0886

At Glasgow on the 11 April 2025, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) of the Rules

1. This is ostensibly an application by Charles Henderson and Rhona Barbour for a penalty regarding a tenancy deposit in terms of rule 103 of the Rules.
2. The application was dated 26 February 2025. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 8 March 2025 seeking further information as follows:
 - (1) Although one written agreement has been produced, it is not clear whether this became a joint tenancy from 1 July 2022 or whether there are 2 separate tenancy agreements. If there are 2 separate tenancies, there should be 2 separate applications.
 - (2) However, it appears that your claim under rule 103 may be timebarred. For any applications under rule 103, a completed application must be submitted within 3 months of the end of the tenancy. It appears from your application that the tenancy ended on 1 December 2024 and if that is correct, the application is timebarred. The Tribunal has no discretion to extend this time limit. Please confirm that you wish to withdraw the present application.
 - (3) If the deposits are still held with Safe Deposits Scotland, you should contact them in the first instance in relation to return of the deposits.

3. The applicant responded on 17 March 2025 as follows:

- (1) Only one tenancy agreement has been provided because Applicant 2, Rhona Barbour, was never issued a tenancy agreement by the landlord during her occupancy of the property. This was noted in our joint application to the First-tier Tribunal. As the principal tenant, I submitted the application on behalf of both of us.
- (2) It is correct that our tenancy ended on December 1, 2024. However, if a completed application must be submitted within three months of the tenancy's end, the deadline would have been March 1, 2025. Our application was submitted on February 27, 2025, which falls within this timeframe. 3. Our deposits remain held with Safe Deposits Scotland, and the landlord is requesting that they be released to her in full.

4. The in-house convenor reviewed the application again and the tribunal wrote on 29 March 2025 as follows:

You have submitted a form G under rule 103. In the form you state that the order sought is for your deposit to be returned. You have advised that the deposit continues to be held by Safe Deposits Scotland. Rule 103 relates to applications for payment of compensation where a landlord has failed to comply with their obligation under the Tenancy Deposit Schemes (Scotland) Regulations 2011 to lodge a tenancy deposit in an approved scheme within 30 working days of the tenancy commencing. Such applications require to be lodged with the Tribunal and accepted within 3 months of the end of the tenancy. Your application under rule 103 has not yet been accepted. More than 3 months have passed since the end of the tenancy which means that an application under rule 103 is now time barred. It would however appear that the order you seek is for the deposit to be repaid. Such applications should be brought under rule 111 by submitting a form F. Such applications are not subject to the requirement that they should be submitted and accepted within three months. If the order sought is for the deposit to be repaid, you should withdraw the current application and submit a form F under rule 111 once you have exhausted the dispute resolution scheme provided by Safe Deposits Scotland. Please clarify how you wish to proceed.

5. The applicant responded on 7 April 2025 as follows:

We are somewhat perplexed at the statement "Such applications require to be lodged with the Tribunal and accepted within 3 months of the end of the tenancy. Your application under rule 103 has not yet been accepted. More than 3 months have passed since the end of the tenancy which means that an application under rule 103 is now time barred." However the time limit is specified in Regulation 9 of the 2011 Regulations. "9.—(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." This regulation refers only to the application being made within the three-month period and not to any requirement for it be also accepted within that timeframe. Further to this, there is no indication that the application must be both submitted and accepted on the Housing and Property chamber website, nor is this a requirement outlined in the Notes on Application form G. Out with HPC guidance websites <https://www.mygov.scot/tenantdeposits/deposit-notprotected#:~:text=How%20to%20apply%20to%20the,tenancy%20agreement%20when%20you%20apply> & Going to the tribunal if your deposit was not protected - Shelter Scotland also supports our understanding that application must simply be made within three months of the tenancy ending. Accordingly we respectfully

submit that the legal requirement is for the application to be made within the three-month period following the end of the tenancy, not necessarily accepted by the Tribunal within that time. As such, the emphasis on the date of acceptance appears inconsistent with both the wording of the relevant regulation and the publicly available guidance provided to tenants. Given this, we would appreciate further clarification on the legal basis for your assertion that an application must be both lodged and accepted within the three-month timeframe. If there are any specific procedural rules or precedents you are relying on, we would be grateful if you could direct us to them. We look forward to your response.

6. The applicant has not withdrawn the application and has not made a new application under rule 111. I have reviewed this application today and I have decided to reject it under rule 8.
7. 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”***.
8. “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”.
9. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as I consider it to be time barred. An application in terms of rule 103 must be made within 3 months of the tenancy coming to an end. An application in terms of rule 103 is not considered to be ‘made’ until it is complete and can be accepted by the tribunal. This application was not accepted when it was first reviewed by the in-house convenor as further information was required. The tribunal does not have any discretion to extend the time limit.

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.

Lesley Anne Ward

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Legal Member