

**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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 Rules")**

in connection with

25 Livingstone Court, Kilmarnock, KA3 7QS ("the Property")

Case Reference: FTS/HPC/PR/25/0582

Mr Sean Martin, Claire Martin (Applicant)

1. The Applicant submitted an application in terms of Rule 103 of the Rules. The application was undated and the Tribunal received it on 11 February 2025.

DECISION

2. The Legal Member considered the application in terms of Rule 8 of the Chamber 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.

- 3. After consideration of the application and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.**

Reasons for Decision

4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
5. The Tribunal issued an email to the Applicant on 14 February 2025 requesting further information within 14 days. The Applicant provided further information by email of 22 February 2025. One of the pieces of information provided was the end date of the tenancy, which the Applicant advised was 12 November 2024.
6. The Tribunal issued a further email to the Applicant on 1 March 2025 advising that the time limit for submitting a full application was before 12 February 2025 and that the Tribunal received the full application on 22 February 2025. The Applicant was advised that the Tribunal has no discretion to extend the time limit for submission of a completed application. The Applicant was advised that the application was timebarred and could not succeed. The Applicant was invited to withdraw the application. No response was received.

7. The Tribunal issued a further email to the Applicant on 2 May 2025, noting that no response had been received. The Applicant was invited to withdraw the application and was advised that if no response was received, the application would be rejected and a copy of the decision would be published on the Tribunal website. No response was received.
8. In terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, an application must be made no later than 3 months after the tenancy ended. The terms of that regulation are mandatory. The Tribunal has no discretion to accept an application which is made later than 3 months after the tenancy has ended. The application therefore has no prospect of success. The 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 Irvine

22 May 2025