



**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

**18 Hawthorn Way, Cambuslang, G72 7AF ("the Property")**

**Case Reference: FTS/HPC/PR/25/2027**

**Mr Paul Cannon (Applicant)**

1. The Applicant submitted an application in terms of Rule 103 of the Rules. The application was dated 25 April 2025 and the Tribunal received it by email on 13 May 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 15 May 2025 in the following terms:-
- A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information*

*/documentation is required:*

- 1. Please provide the tenancy agreement.*
- 2. Please provide evidence of the end date of the tenancy or confirm you are still living in the property. If the latter, please explain why your address is stated as different from the property address.*
- 3. If available, please provide evidence of the payment of a deposit and the information about when it was protected.*
- 4. An application under Rule 103 can only be made against the LANDLORD and not against a letting agent. You have made the application against the letting agent. At present the application is not competent because it is made against the wrong Respondent. If you wish to pursue the application, you must amend the application to show the landlord as the respondent and you must provide not just the name of the landlord but also his address.*
- 5. 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 22 May 2025. If we do not hear from you within this time, the President may decide to reject the application.*

6. The Applicant responded by email on 20 May 2025, providing a copy of the tenancy agreement and evidence that the tenancy ended on 19 February 2025. The application was not amended and was still directed against the letting agent.

7. The Tribunal issued a further email to the Applicant on 22 May 2025 in the following terms:-

*We refer to our email of 15 May and note your response by email on 20 May 2025. A legal member of the Tribunal with delegated powers of the Chamber President has considered the application and has commented as follows:*

- 1. As advised in our email of 15 May, 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 requires of Rule 103. Applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. The Tribunal has no discretion to extend the time period. You provided the information requested on 20 May 2025. We note from your response*

*that the tenancy appears to have ended on 19 February 2025. If that was the last day of the tenancy, it appears your application is now timebarred. Please confirm that you wish to withdraw the application or alternatively provide your submissions on why you consider your application can be accepted.*

*Please respond within 14 days. Upon receipt of the above information, a decision can then be taken on whether the application is valid and whether they should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application.*

8. The Applicant responded by email on 22 May 2025 in the following terms:-

*I would like to point out that my application was lodged on time, but you asked for more information, and set a deadline, which I met.*

*If you required the detail that you subsequently asked for after lodging my application, perhaps you should consider asking for that in the application pack. I was an NHS Director of Administration for many years and I would have thought that basic information of that sort could have been flagged at the start of the process.*

*I have moved to Spain and to be honest pursuing this was not on the top of my agenda. Spanish bureaucracy is an art form in itself!*

*I would be grateful if this could be put to the assessor and my claim considered. If of course it is duly rejected I would gladly accept that, but Safe Deposit Scotland seem to think there is a case.*

*It took some time to settle my deposit return as my landlord concocted reasons to retain the full amount, despite the letting agent stating that the property was left in a better condition 9 years after taking up the tenancy.*

9. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") imposes obligations on landlords to secure tenant deposits with an approved scheme within 30 working days of the beginning of the tenancy. The 2011 Regulations do not apply to letting agents. The Applicant's application is directed against a letting agent of the landlord. It is not competent to seek an order under the 2011 Regulations against a letting agent.

10. In terms of regulation 9 of the 2011 Regulations, 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 tenancy ended on 19 February 2025 and the application does not meet the requirements of rule 103. 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

Nicola Irvine  
Legal Member  
26 May 2025