



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

Case reference FTS/HPC/PR/25/1797

Parties

Ms Daria Naomi Argov Dayan (Applicant)

Flat 2/160 Bothwell Street, Glasgow, G2 7EA (House)

1. On 25 April 2025 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application by the Applicant. The application was made under Rule 103 of the Rules of Procedure. In the application the Applicant asked for return of a holding deposit paid for a property she did then not move into. She submitted evidence of payment of a deposit and added information about the message exchange between her and the Respondent, which shows that the Applicant ultimately did not move into the property. She also submitted a copy of a document headed residential rental agreement for a duration of 5 weeks dated 22 February 2025 for a period from 11 March 2025 o5 15 April 2025 (extendable).
2. The Applicant was advised that the return of a deposit is not an outcome that can be

achieved through an application under rule 103 and subsequently made a further application under rule 111 for the deposit return. She provided evidence that the deposit had not been lodged with any of the deposit scheme providers. In the FTT letter asking for further information dated 30 April 2025 the Applicant was advised to obtain legal advice to address the question whether in the circumstances she described an application under rule 103 would be appropriate and possible. She did not address this in any further correspondence.

3. All documents are referred to for their terms and held to be incorporated herein.

B DECISION

1. I considered the application in terms of Rule 8 of the 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."

- 2. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65]**First-tier Tribunal orders]) of the 2011 Regulations, the application must—

(a)state—

(i)the name and address of the tenant or former tenant;

(ii)the name, address and profession of any representative of the tenant or former tenant; and

(iii)the name, address and registration number (if any) of the landlord;

(b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c)evidence of the date of the end of the tenancy (if available); and

(d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Requirements for making an application

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

(1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal 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 no later than 3 months after the tenancy has ended."

S 1 of the Private Housing (Tenancies) (Scotland) Act 2016

1Meaning of private residential tenancy

(1)A tenancy is a private residential tenancy where—

(a)the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c)the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2)A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

D REASONS FOR DECISION

1. The Applicant stated clearly that the payment was for a holding deposit and that ultimately she never moved into the property. The Application is made under Rule 103 of the Procedural Rules and Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Both provisions clearly state that such an application has to be made by a tenant or former tenant. The issue for the Tribunal is whether the application relates to a relevant tenancy for which the Tribunal has jurisdiction. As the Applicant argues she entered into a contractual tenancy agreement but did then not move in because the prospective landlord did not wish to proceed with the agreement, the question is whether there was a relevant tenancy. As the start date was given as 11 March 2025, the only possible type of tenancy that could be relevant would be a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. As stated above, s 1 of the 2016 Act defines what a Private Residential Tenancy is. One requirement is section 1 (1) (b) of the Act, namely that “the tenant occupies the property (or any part of it) as the tenant’s only or principal home”. In this case, the Applicant never did occupy the property at all and therefor no relevant tenancy was ultimately constituted. The Applicant is not a tenant or former tenant of the property in terms of the 2016 Act and thus is not a qualifying person to make the application.
2. It is not competent or appropriate for the FTT to deal with an application which is not made by a qualifying person for that type of application. The application is not competently made because the Applicant is neither a tenant nor a former tenant for the property. The application thus has to be rejected.
3. For the avoidance of doubt, this decision does not affect any rights and civil remedies the Applicant may have in terms of the contractual obligations of the parties, which would have to be litigated in a different forum. The Applicant may wish to obtain independent legal advice on that matter.

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.

Petra Hennig McFatridge

Petra Hennig McFatridge
Legal Member
29 May 2025