

**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

63/4 Ocean Drive, Leith, Edinburgh, EH6 6BP ("the Property")

Case Reference: FTS/HPC/PR/25/2171

Ms Monsurat Adetutu (Applicant)

1. The Applicant submitted an application in terms of Rule 103 of the Rules on 20 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. On 23 May 2025, the Tribunal issued an email to the Applicant in the following terms:-

A legal member of the Tribunal with delegated powers of the Chamber President has considered the application and has determined that the following information requires to be provided before the application can progress:

1. In your application you are seeking return of your deposit and a financial penalty for failure to protect your deposit. Please note that applications made under rule 103 relate only to a failure to protect deposits. If you wish to make a claim for return of your deposit, you should make a separate application under rule 111. Please advise if

you wish to do so and provide a completed application with supporting documents.

2. Please provide any available evidence to confirm that your deposit was not secured with the approved schemes.

3. 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.

4. 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.

You may wish to take advice from a housing advisory service before responding. 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.

Please reply to this office with the necessary information by 6 June 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 23 May 2025 providing some of the information requested.

7. On 30 May 2025, the Tribunal issued a further email to the Applicant in the following terms:-

A Legal Member of the Tribunal has reviewed your application. Before a decision can be made on whether your application can proceed, we require you to provide us with the following information:-

- 1. You have amended your application to reflect your former landlord, Yanling Wang, as Respondent. However, you have stated their address as being 5 Clerk Street, Edinburgh, which appears to be the address of their agent, Lets let Property Limited. Your application must state the landlord's*

current residential address, as we require to serve a copy of the application on them. If you do not know their residential address, you should formally request this information from Letslet Property Limited. If they do not or cannot, provide it to you, you will require to take reasonable steps to ascertain the landlord's residential address, such as instructing a sheriff office to carry out a trace. Thereafter the application will require to be amended to reflect the landlord's residential address so that it can be served on them.

- 2. 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 provide the information no later than 13 June 2025. Upon receipt of the information a Legal Member will consider your response and may seek further information from you before a decision is made on whether your application can proceed. In the absence of a response your application may be rejected without further notice. You may wish to consult a solicitor or advice agency if you require further guidance regarding your application. The Tribunal cannot provide you with legal advice but there are details of advice agencies under the Useful Links section of the Tribunal website.

No response was received.

8. On 15 July 2025, the Tribunal issued a further email to the Applicant in the following terms:-

Your applications have been further reviewed by a Legal Member of the First-tier Tribunal with delegated powers of the Chamber President.

With regard to case reference number FTS/HPC/PR/25/2171, it is noted that you have failed to provide the further information requested by email dated 30 May 2025. You have already been advised that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months

after the tenancy has ended and 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. 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. The Tribunal has no discretion to extend this time limit.

9. The Applicant has been given two opportunities to provide further information and has failed to do so. The Applicant advised that the tenancy ended on 31 March 2025. An application for an order in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 must be made no later than 3 months after the tenancy has ended. As the Applicant did not provide a completed application within that timeframe, the application is now timebarred. The Legal Member therefore determines that the application is frivolous, misconceived and 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
31 July 2025

