



**Decision with Statement of Reasons of Helen Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/CV/21/2866**

**Parties:**

**Christopher Graham; Jessica Reid ("the Applicant")**

**Laura Pacevitch ("the Respondent")**

**Tribunal Member:**

**Helen Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the Tribunal purporting to be made under Rule 111 on 18<sup>th</sup> November 2021. The following documents were enclosed with the application:
  - (i) Tenancy Agreement
2. The application was considered by the Tribunal on 22<sup>nd</sup> November 2021 and further information was requested as follows:
  1. Can you please clarify what you are seeking? You have applied under rule 111 which is the rule number for an application for a civil remedy such as payment of the deposit or part of the deposit, however in section 5 of the form you state you are seeking "compensation for the improper lodging or handling of the deposit" and you confirm the deposit was not

lodged in a deposit scheme. A claim for a penalty for not lodging a deposit in a deposit scheme should be made under Rule 103 and you require to provide a description of what you are seeking which can be a sum of money up to three times the deposit.

2. If you are seeking a penalty under rule 103 for failure to lodge the deposit please provide the following:-

a. Please amend the application by confirming you wish to apply under Rule 103 and please state the sum you are seeking

b. In addition please provide any evidence of the payment of the deposit

c. Please provide any evidence you have that it was not lodged in a tenancy deposit scheme?

d. Please provide evidence if available of the date the tenancy ended. If you don't have any evidence of this please confirm when the tenancy ended. An application under Rule 103 must be made and all relevant information provided to the Tribunal within 3 months of the end of the tenancy otherwise it will not be able to be accepted as all claims under the Tenancy Deposit Regulations must be made within 3 months of the end of the tenancy. Please therefore respond as soon as possible with this information and clarification so that your application can be considered further.

3. If you also wish to apply for a payment order then please provide an additional application form under Rule 111 and please provide the following information:-

i. Please provide details of what you are seeking and why. Please confirm what part of the deposit was not returned and what sum of money you are seeking.

ii. Please provide further details of why only part of the deposit was returned

The Applicant was given until 6<sup>th</sup> December 2021 to respond, failing which the application may be rejected.

3. The Applicant was reminded by letter dated 21<sup>st</sup> December 2021 of the need to provide the requested information within 14 days.

4. The Applicant responded by email dated 27<sup>th</sup> December 2021 as follows:

- Amended application seeking penalty under rule 103 for failure to lodge the penalty requesting a sum of £1500 be paid to us.

- Screenshot of email confirmation from landlord L.Pacevitch of receipt of our £550 deposit

- Signed tenancy agreement which states on page 8 that deposit would be lodged with Safe Deposit Scotland.
- Notice to leave letter stating the 20th of August 2021 as date tenancy ended
  
- Screenshots of Whatsapp communications between landlord and myself at end of tenancy regarding deductions for additional cleaning and furniture replacement including invoice of additional cleaning charges
  
- Screenshots of bank transfer directly from Pacevitch and Hock into my bank account with remaining deposit amount following deductions of cleaning and furniture replacement charges

5. The Tribunal considered the Applicant's response on 20<sup>th</sup> January 2022.
6. The Tribunal considered the application in terms of Rule 8 of the Chamber Procedural Rules, which 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;·*  
*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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."*

7. '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".*
8. Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") provides:
 

103. Where a tenant or former tenant makes an application under regulation 9 (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.

9. Rule 5 provides:—

(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

10. Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) provides:

(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.”

### **Reasons for Decision**

11. The Application is made under Rule 103 which provides that the date of end of the tenancy must be provided. The information that the tenancy ended on 20<sup>th</sup> August 2021 was not provided until 27<sup>th</sup> December 2021, by which time, the period of 3 months, as required by Regulation 9(2), had expired. To be valid, a complete application would have had to have been made by 20<sup>th</sup> November 2021. In terms of Rule 5(3) “the application is to be held to be

made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement”, which in this case was 27<sup>th</sup> December 2021.

12. It would not be appropriate for the Tribunal to accept an application which is made outwith the required 3 months’ time limit.

13. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**



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**Legal Member/Chair**

**20<sup>th</sup> January 2022**  
**Date**