



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

24 Kinghorne Walk, Dundee ("the Property")

Case Reference: FTS/HPC/20/2054

Anna Higginbottom 10 Grayhills Walk, Dundee ("the Applicant")

Slater Hogg and Howieson, 21 Dock Street, Dundee ("the Respondent")

1. The Applicant lodged an application seeking a payment order in connection with a tenancy deposit. The Applicant stated that she seeks a payment order for a deposit of £700 as she had been unable to recover it from the tenancy deposit scheme.
2. On 13 October 2020 the Tribunal issued a letter requesting further information. The Applicant was advised that she had to make the application against the landlord, not the letting agent, and was asked to clarify whether the deposit had been subject to the tenancy deposit scheme adjudication process, as the Tribunal would not have jurisdiction if this was the case. The Applicant replied but did not provide a satisfactory response to either issue. Further letters were issued to the Applicant on 13 October, 13 November and 10 December 2020 seeking clarification of the Tribunal's jurisdiction. No response was received. On 16 February 2021, the Tribunal wrote again to the Applicant advising that the Tribunal only had jurisdiction if the adjudication process of the tenancy

deposit scheme had not been used to determine the dispute regarding the deposit. She was asked to clarify the position and notified that if she did not provide a response, the application may be rejected. No response has been received.

DECISION

3. The Legal Member considered the application in terms of Rules 5 and 8 of the Chamber Procedural Rules. Rule 5(3) provides:-

(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 requirement manner for lodgment.

4. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “ good reason to believe that it would not be appropriate to accept the application.”**

Reasons for Decision

5. The Applicant submitted an application for a payment order in terms of Rule 111 of the Rules. The application relates to a tenancy deposit and names a firm of letting agents as the Respondent. The application also makes reference to a tenancy deposit scheme. The Tribunal wrote to the Applicant requesting further information. The Applicant was advised that an application for repayment of a deposit had to be made against the landlord, and that the Tribunal did not have jurisdiction to deal with repayment of a tenancy deposit where the matter had been determined by a scheme adjudication process. The Applicant replied but did not address either matter. The Tribunal has sent four further letters to the Applicant directing her to provide information which would establish jurisdiction. No response has been received.

6. The Tenancy Deposit Schemes (Scotland) Regulations 2011 impose obligations on landlords in connection with tenancy deposits paid to them by tenants. At the end of a tenancy, repayment of the deposit can be determined using the adjudication process provided by the relevant scheme. In terms of Regulation 38(3) of the Regulations, the decision of an adjudicator is final. It follows that, if the tenancy deposit scheme used by the parties carried out an adjudication in relation to the deposit which is the subject of the application, the Tribunal does not have jurisdiction to entertain the application. The information provided by the Applicant refers to the tenancy deposit scheme and a failure by them to repay the deposit to her, but does not establish whether or not an adjudication has taken place. The Applicant has been asked to clarify the position on several occasions, in requests for further information issued in terms of Rule 5, but has failed to do so. Furthermore, the application appears to have been made against the letting agent, rather than the owner and landlord of the property. The Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. 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.

J. B

Josephine Bonnar, Legal Member
17 March 2021