



**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

7 Victoria Road, Falkirk, FK2 7AU ("the property")

Case Reference: FTS/HPC/CV/21/0178

The parties:

Mr Aaron Iwaniec (Applicant)

Mr Chris Wieczorek (Respondent)

A BACKGROUND

1. On 25 January 2021 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) an application made under Rule 70 of the Procedural Rules. The applicant states in part 5c of the application that the applicant is seeking an order for the respondent to pay the deposit into a registered scheme and an order for payment of compensation due to the failure to lodge the deposit in a registered scheme. The application was accompanied by a screenshot of correspondence with the respondent on the deposit status.
2. Previously, on 9 December 2020, the applicant had lodged an application under Rule

103 of the Procedural Rules claiming an order for a penalty of 3 times the deposit against the respondent for not lodging the deposit for the property with a registered scheme and a payment order for £390 for the actual deposit. Case reference number PR/20/2555 was allocated to said application.

3. On 28 January 2021 the Tribunal wrote to the applicant as follows: *“ The Tribunal has received your application under Rule 70 of the procedural rules. The content of the application appears to be asking for compensation because the landlord allegedly did not pay the deposit into a registered deposit scheme and for the deposit to be paid into an approved scheme.*

*You have already lodged an application under reference PR/20/2555, which is asking for the Tribunal to consider an appropriate penalty in form of a payment order for up to 3 times the value of the deposit for any non-compliance of the landlord with The Tenancy Deposit Schemes (Scotland) Regulations 2011 and which would deal with the issue of an order to pay any deposit funds into an appropriate scheme. **This is, however, what you seem to be applying for again with the new application under Rule 70.** A duplicate application would not be acceptable. Rule 70 does not deal with penalties for a failure to lodge a deposit. The correct Rule for that is Rule 103 and you have already lodged that application.*

Please immediately provide an amendment to the entries in parts 5 b and c of your application under Rule 70 to detail what payment order you are seeking in the application under Rule 70 and what the legal basis of that claim would be, so that, if your reply is received soon enough and the application is allowed to go forward, it can be scheduled together with the application under Rule 103. Please read again the previous comments in our letters to you under the Rule 103 application, which set out what is covered by that application and what is not.”

4. The applicant replied on 28 January 2021 he was confused as to what he has to do because he had been advised by the Tribunal he would need to lodge an application under Rule 70 to get compensation.
5. On 29 January 2021 the Tribunal again wrote to the applicant in the following terms: *“You raised an action for compensation for failure to lodge a deposit in a tenancy deposit scheme for a deposit you claim you paid for the above property and you also asked for the return of the deposit. When asked you advised the tenancy is still continuing. Normally a deposit is only repayable when the tenancy ends and if lodged in a scheme that will allow the parties to have a dispute resolution procedure if there is disagreement over the return of the deposit. The Legal member who considered and*

accepted your claim under Rule 103 advised “The application will proceed under Rule 103 only. As previously advised, if you wish to seek an order for repayment you will require to submit a second application under Rule 70, with all the supporting evidence. It may be possible for the cases to be heard together but only if it is submitted and accepted immediately as the Rule 103 application will now be scheduled for a case management discussion. You will require to clarify why you are entitled to repayment of the deposit before the tenancy has come to an end.” This application is being dealt with under PR/20/2555. You have now submitted a rule 70 claim which is a claim in a civil action for an order for payment but you have not explained what your legal ground for claiming money is. You have mentioned compensation for the failure to lodge the deposit in a tenancy deposit scheme but this is the claim that is already proceeding in your other case under Rule 103, as previously advised you cannot claim twice for the same compensation. It is noted you will have your first case management discussion for case number PR/20/2555 on 4th March.

Can you please now advise

- 1. If you wish to continue to make a separate claim and can you please clarify what this is for. If it is for the return of the deposit which you mentioned in your first application and which is why you were advised this can only be done in a separate claim under Rule 70, you will require to advise why you believe you are entitled to the return of the deposit before the tenancy has come to an end. Please also provide a fresh section 5b and c of the application form with the amount you are seeking and why stated on it.*
- 2. If you are making a claim of any sort for damages or payment of money we will need a copy of the tenancy agreement as this is a separate application and documents are not copied from one application to another.*
- 3. Please also provide a copy of any relevant documentation to evidence your claim.*
- 4. If you are content that your application under Rule 103 is sufficient and you do not wish to make another claim then you can withdraw this application by advising the tribunal in writing of your request to withdraw it. Please respond to this request for clarification and further information within 14 days failing which this application may be rejected.*
6. As of the date of this decision, 1 March 2021 no reply has been received by the Tribunal.

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

Application for civil proceedings in relation to an assured tenancy under the 1988 Act

70. Where a person makes any other application to the First-tier Tribunal by virtue of section 16 (First-tier Tribunal's jurisdiction in relation regulated and assured tenancies etc.) of the 2014 Act, the application must—

(a) state—

- (i) the name and address of the person;
- (ii) the name and address of any other party; and
- (iii) the reason for making the application;

(b) be accompanied by—

- (i) evidence to support the application; and
- (ii) a copy of any relevant document; and

(c) be signed and dated by the person.

D REASONS FOR DECISION

1. The Application is made under Rule 70 of the Procedural Rules.
2. The applicant is seeking a payment order on the basis that the deposit he paid to the respondent has not been lodged in an approved scheme and is asking for an order for the deposit to be so lodged. An application of that nature would have to be raised under Rule 103 of the Procedural Rules, which specifically relates to orders the Tribunal can make for a penalty to be paid by the landlord to a tenant or former tenant for failing to comply with the requirements in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Regulation 10 (a) allows the Tribunal to make an order for payment to the tenant an amount not exceeding three times the amount of the tenancy deposit and (b) (i) allows the Tribunal to order the landlord to pay the tenancy deposit to an approved scheme.
3. The applicant has already made an application under Rule 103 and this will call for a Case Management Discussion on 4 March 2021.
4. An application under Rule 70 does not provide for an order to be made by the Tribunal to order the landlord to pay the tenancy deposit to an approved scheme. Rule 70 only covers a payment order. Thus the claim for an order to pay the deposit into an approved scheme cannot be made under Rule 70 of the Procedural Rules. It is incompetent.
5. The application for payment by the landlord to the applicant of any funds due in terms of compensation would require the applicant to lodge evidence of such a claim. No such evidence has been provided for this application despite the Tribunal requesting this. The applicant has not provided a copy of the tenancy agreement or any other documentation to show that he would be entitled to a compensation payment in terms of the Rule 70 application. The application thus does not meet the lodging requirement for Rule 70 (b) (i) and (ii).

6. It would not be appropriate for the Tribunal to accept an application under Rule 70 if the order sought is not competent under that Rule and if the application does not meet the lodging requirements. Obviously this decision has no influence on the progress of the application under Rule 103 with reference number PR/20/2555.

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

Legal Member

1 March 2021