



**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/CV/21/1846

**Parties**

**Mr Tashfeen Mogul (Applicant)**

**Safe Deposit Scotland (Respondent)**

**Flat 2/1, 206 Woodlands Road, Glasgow, G3 6LN (House)**

**A BACKGROUND**

1. On 2 August 2021 the Applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 111 of the Procedural Rules regarding the property. The application was directed against SafeDepositsScotland. The Applicant asked for an order for payment of £850 “erroneously paid to the tenant” by SafeDepositsScotland (SDS) following a dispute over the deposit amount. The application was accompanied by an invoice and order confirmation, a document headed “overview of dispute” an adjudicator’s decision and advice as to how to apply for a review from SDS and what appears to be a review

outcome email from SDS dated 26.5.2021.

2. On 12 August 2021 the Tribunal wrote to the Applicant in the following terms: *“The application is made under Rule 111, which relates to civil actions arising from a private residential tenancy. You have not provided any documentation that would indicate that the matter relates to a private residential tenancy and that SafeDeposits Scotland were in a contractual relationship for a private residential tenancy with you. Usually the respondent in matters of landlords seeking payment for invoices relating to damage of a property would have to be directed to the former tenant. If a tenant has moved out without providing a forwarding address the landlord would have to apply to service by advertisement and the application for this would have to be accompanied by a negative trace report either from a tracing agent or from Sheriff Officers. Please consider the matter, if possible seek some legal advice and then make representations on what legal basis you consider the matter falls under the Tribunal’s jurisdiction under S 71 of the Private Housing (Scotland) Act 2016. As it stands the application would have to be rejected as there is no evidence the Tribunal does have jurisdiction in this case under that provision.”*
3. On 25 August 2021 the following answer was received: *“I thank you for the Email you sent. I understand that there is no direct contract between me/SafeDepositsScotland, but that the tenancy deposit scheme, would have a form of contract/agreement with the Scottish government. So I require you to become my representative in Civil Proceedings against the authority. The Civil Proceedings, being in that the tenancy deposit scheme, did not obey own rules. In my Appeal, I had sent boiler engineers invoice showing wilful damage, cited by engineer, by the three tenants to have a new boiler. Such evidence was ignored by authority. Regards having the lead tenant forwarding address. Even if I knew the address she would claim unemployed student. Never receive money. Thus my complaint against the Tenancy Deposit holder is correct, within Scottish law, evidence I have now provided, as you requested. I appreciate for you to consider the above.”*
4. On 9 September 2021 the Tribunal again wrote to the Applicant as follows: *“Before a decision can be made, we need you to provide us with the following:*
  - *Your response of 25 August 2021 to the tribunal’s request for further information dated 12 August 2021, does not provide a complete or satisfactory response to the*

*requests that were made and parts of your response are difficult to understand or do not accord with tribunal procedure.*

*• The tribunal, as a neutral judicial body, cannot act as your representative, as suggested by you. Similarly, the tribunal cannot provide you with advice in connection with an application. If you require advice you should obtain this from a solicitor or specialist housing advisor. It is recommended that you seek such advice prior to responding to this letter.*

*• Please re-consider the request for further information dated 12 August 2021 and provide a further response if you wish to continue with your application.*

*• If you wish to amend your application to proceed with a claim for civil proceedings against the former tenants in respect of damage to property, please submit an amended application form, together with an application for Service by Advertisement, and supply supporting evidence of efforts to trace the tenants, such as a report from tracing agents or sheriff officers. Supported by the Scottish Courts and Tribunals Service [www.scotcourtribunals.gov.uk](http://www.scotcourtribunals.gov.uk)*

*• If you do not adequately address the request for further information and/or amend the application and submit a service by advertisement application, your application is likely to be refused.*

*• If you wish to withdraw your application, please confirm the same in writing. Please reply to this office with the necessary information by 23 September 2021. If we do not hear from you within this time, the President may decide to reject the application.”*

5. No reply has been received to date.

## **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

### **Application for civil proceedings in relation to a private residential tenancy**

**111.** Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 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.

### **S 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

71 First-tier Tribunal's jurisdiction

(1) In relation to civil proceedings arising from a private residential tenancy—

- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
- (b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—

- (a) the prosecution of a criminal offence,
- (b) any proceedings related to such a prosecution.

## D REASONS FOR REJECTION

1.The Applicant has not provided a relevant Private Residential Tenancy agreement. He states his application is based on *“the tenancy deposit scheme,would have a form of contract/agreement with the Scottish government.So I require you to become my representative in Civil Proceedings against the authority.The Civil Proceedings,being in that the tenancy deposit scheme,did not obey own rules.”* He is aggrieved that a decision by SDS, which is an approved scheme dealing with adjudication over tenancy deposits, in his view was not correctly made. He has not provided any legal basis for a demand against SDS arising out of any tenancy agreement. He does not argue that SDS have retained the funds but wishes essentially to appeal the decision made by SDS to the First-tier Tribunal for Scotland with an expectation that the Tribunal can then award payment of the sum to him because he argues the decision of SDS was wrong. This is not part of the Tribunal’s jurisdiction.

2.The Tenancy Deposit Schemes (Scotland) Regulations 2011 in Regulations 36 and 37 set out the dispute resolution outcome and review provisions. These do not include a further appeal to the First-tier Tribunal. The Tribunal’s procedural rules do not include appeals against decisions of SDS or any other scheme administrators of an approved scheme.

3.The Applicant has not provided the tenancy agreement as requested in the letter of 12 August 2021, which stated: *“You have not provided any documentation that would indicate that the matter relates to a private residential tenancy and that SafeDeposits Scotland were in a contractual relationship for a private residential tenancy with you.”* The Applicant has not evidenced that there was a Private Residential Tenancy in the first place and that the application arises out of a Private Residential Tenancy.

4.The Applicant states he cannot proceed against the former tenant as the tenant has left without a forwarding address. The Tribunal clearly set out the option of applying for Service by Advertisement in these circumstances. If the Applicant can show that there was a tenancy agreement and that demands arise from that against a former tenant, the remedy is an application against the former tenant, which is an option that remains open to the Applicant.

5.It would not be appropriate for the Tribunal to accept the application because:

- a) The Applicant has failed to provide information which would enable the Tribunal to process the application further. He did not reply fully to the requests for further information sent on 12 August 2021 and 9 September 2021. He has not provided the necessary evidence to support the application as required in Rule 111 (b) (i) of the Procedure Rules starting with a relevant tenancy agreement.
- b) Based on the information he did provide the First-tier Tribunal Housing and Property Chamber does not have jurisdiction over this matter as it is not an appellate court for approved schemes.

## **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

19 October 2021