



**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

Corsua Farmhouse, Templand, Lockerbie, DG11 1TH ("the property")

Case reference FTS/HPC/PR/21/0218

The parties:

Miss Laura Scott ("the applicant")

Mr David John Kincaid ("the respondent")

A BACKGROUND

1. On 29 January 2021 the applicant's representative lodged with the First-tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) an application made under Rule 103 of the Procedural Rules. The application did not provide the applicant's address. The application did not provide the date the tenancy ended. The tenancy agreement and notice to leave lodged were not legible as they appear to be photographs of the documents taken from some distance.
2. On 9 February 2021 the Tribunal wrote to the applicant's representatives requesting the following information to be submitted by 23 February 2021 as follows: "1. Please

provide an address for the applicant. 2. It is noted that there appears to have been a joint tenant, please advise if the joint tenant is to be a second applicant in this application; and if so please amend the application to provide the second applicant's name and address. 3. It is noted that there appears to have been two landlords, please advise if the second landlord is also to be a second respondent in this application; and if so please amend the application to provide the second respondent's name and address. 4. The application you have made is under rule 103; which is an application where there has been a breach of the tenancy deposit regulations, where the deposit has not been placed into an approved tenancy deposit scheme within 30 days of the tenancy commencing and information has not been provided by the landlord. If the landlord has failed to comply with those regulations then the tenant may be awarded a sum of up to three times the amount of the deposit. Please confirm that this is the order that you seek. We note however that you also appear to seek the return of the deposit. Any such application should be made under rule 111. You are entitled to make an application under each rule. The applications can be heard together. 5. Please confirm if you also wish to make an application under rule 111; and provide the completed application with supporting documentation. 6. Please confirm the date when the tenancy ended. 7. Please provide evidence of payment of the deposit. 8. The Notice to Leave is not legible. Please resubmit a better copy. 9. The tenancy agreement is difficult to read, if possible please re-submit a better copy."

3. On 10 March 2021 the Tribunal emailed the same letter again to the applicant's representatives asking for a reply by 24 March 2021. As of the date of this decision, 13 April 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

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65**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.

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules.
2. Rule 103 (a) (i) of the Procedural Rules states that such an application must state the name and address of the tenant or former tenant making the application. Here the address for the applicant is missing. The applicant was repeatedly asked to provide the address and did not do so.
3. Rule 103 (c) of the Procedural Rules asks for evidence of the end of the tenancy to be provided. This is to allow the Tribunal to consider whether the application is made within the time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, which only allows an application to be made within 3 months of the tenancy ending. The information was repeatedly requested by the Tribunal. The date stated as the date of the notice expiring in the notice document provided could not be read due to the quality of the document submitted and may in any event not have been the actual end date of the tenancy. The information is thus still not available.
4. The applicant had been explicitly asked by the Tribunal to provide the above information and further details. The applicant was advised that if this was not forthcoming the application may have to be rejected. The Tribunal gave the applicant ample opportunity to complete the application by providing the requested evidence in the letters of 9 February 2021 and 10 March 2021.
5. The applicant has not answered the request for further information. The applicant not provided the information or the documents requested. The application as it stands does not meet the requirements of an application under Rule 103.
6. It would not be appropriate for the Tribunal to accept an application that does not meet the lodging requirements of the Rule under which the application is being made. The application is thus rejected.

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
13 April 2021