

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBERPRESIDENT**

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

in connection with

28 Balmoral Drive, Bearsden, Glasgow, G61 1DJ ("the Property")

Case Reference: FTS/HPC/PR/19/0126

MR CHRISTOPHER SMALL ("the Applicant")

MS JACKIE KENNEDY ("the Respondent")

1. The application was made under Rule 103 of the Rules being an application by a tenant in for an order for payment where a landlord had not paid a tenancy deposit into an approved scheme. The application was received by the Tribunal on 16 January 2019. Attachments were provided with the application form to support the application and these attachments included, amongst other things, copies of the written tenancy agreement between the parties, together with copies of correspondence between the parties.
2. The tenancy agreement between the parties commenced on 17 August 2018. A request for further information, dated 23 January 2019, was sent to the Applicant asking him to confirm, amongst other things, the date on which the tenancy ended as the application required to be made within three months of the end of tenancy and highlighting that the application was neither signed nor dated. The Applicant subsequently confirmed that the tenancy ended on 12 October 2018 and that he had submitted the application on 11 January 2019.

Decision

3. The circumstances in which an application is to be rejected are governed by Rule 8

of the Chamber 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."

- 4. After consideration of the application, the attachments and correspondence from the Applicant's solicitor, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

5. Regulation 9 of The Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") states:-

(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] ¹ 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 [...] ² no later than 3 months after the tenancy has ended.

Rule 5(1) of the Rules states:-

(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.

Rule 103 of the Rules states:-

Where a tenant or former tenant makes an application under regulation 9 ([First-tier Tribunal orders] ²) 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.

6. In the present case, although the Applicant advises he submitted the application on 11 January 2019, it only appears to have been received by the Tribunal on 16 January 2019. Furthermore, it was not signed nor dated by the Applicant, contrary to the requirements of Rule 103(d), so could not have been held to have been made in terms of Rule 5(1). As the three month period within which the Applicant was entitled to make an application expired on 12 January 2019, the application cannot be said to have been made within three months of the tenancy ending as is required by Regulation 9(2) of the 2011 Regulations. The Application is therefore submitted outwith the time limit and the Tribunal has no discretion to accept a late application.
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 LR9. He indicated at page 16 of the judgment; "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless*

or academic". It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success. Accordingly, the present application is rejected on the basis that it is frivolous.

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.

Mr Alastair Houston

Legal Member

8 March 2019