

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**DECISION AND STATEMENT OF REASONS OF VALERIE BREMNER, 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

Flat 4/8,460 Sauchiehall Street, Glasgow G2 3JU

**Case Reference: FTS/HPC/PR/19/0663**

**KIRSTEN SMITH ("the applicant")**

**ZAK HUSSAIN ("the respondent")**

1. On 28 February 2019 an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules being an application for payment order where a landlord has failed to pay a deposit into an approved scheme. The following documents were enclosed with the application:-

A deposit scheme certificate

A photo of a page of a tenancy agreement

A screenshot of text messages giving an acceptance of notice to end tenancy as at 24<sup>th</sup> November 2018.

An email from the Applicant explaining why the Application was lodged out with three months of the end of the tenancy.

## DECISION

2. The application was considered 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."*

3. On 8 March 2019 the application was considered by a Legal Member of the Tribunal with delegated powers of the Chamber President. It was noted that the application was received by the Tribunal on 28 February 2019 and that information given by the Applicant indicated that the tenancy had ended on 24<sup>th</sup> November 2018.
4. After consideration of the Application and documents submitted by the Applicant in support of same 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 Rules.

### **REASONS FOR DECISION**

5. 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.
6. The Legal Member also considered The Tenancy Deposit Scheme (Scotland) Regulations 2011 upon which this Application is founded which state at Regulation 9-:

*(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.*

Section 16 of the Housing (Scotland) Act 2014 transfers the Sheriff’s function and jurisdiction in specified civil actions in the private rented sector to the Tribunal

including actions in terms of the Tenancy Deposit Scheme (Scotland) Regulations 2011.

7. In terms of Regulation 9 of the Tenancy Deposit Scheme Regulations 2011 an application such as this **must** be lodged no later than three months after the end of the tenancy. The tenancy to which this application relates ended on 24<sup>th</sup> November 2018 and the application was received on 28<sup>th</sup> February 2019, some 4 days after the three month period. The Application is therefore submitted outwith the time limit and the Tribunal has no discretion to accept a late application.
8. Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous and has no prospect of success.

### **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.

Valerie Bremner  
Legal Member  
8 March 2019