

**DECISION AND STATEMENT OF REASONS BY THE 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

46 Brock Street, North Queensferry, Fife, KY11 1JE
the Property

Case Reference: FTS/HPC/PR/19/1508

The Parties:-

Mr Brian Mann, 17 LT Sales Avenue, Dalgety Bay, KY11 9GB

Applicant

Mr Terrance Myles, 1 Ferry Barnes Court, North Queensferry, Fife, KY11 1ET

Respondent

Background

1. By Application sent on 4th April 2019 the Applicant applied to the Tribunal under Rule 103 of the Procedural Rules for an order for payment where a Landlord has failed to carry out duties in relation to Tenancy Deposits.
2. In terms of Rule 8 of the Procedural Rules the Legal Member of the Tribunal under the delegated powers of the Chamber President considered whether there were grounds to reject the Application. The Legal Member determined to reject the Application on the basis that he had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

Reasons for Decision

3. The Legal Member considered the Application together with supporting documents which were lodged.
4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*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 had to consider in this Application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

5. The Applicant, in his emails sent to the Tribunal on 27th March 2019 and 28th March 2019, confirmed that the period of his tenancy of the Property was March 2018 to October 2018. Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 provides that Applications for an order for payment where a Landlord has failed to carry out duties in relation to Tenancy Deposits must be made no later than three months after the tenancy has ended. Given that the Application was lodged in April 2018 the Legal Member has determined that the Application has no prospect of success.
6. Therefore, having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Legal Member concluded that the Application is frivolous and has rejected it under Rule 8(1)(a) of the Procedure Regulations.

Decision

7. The Legal Member, with delegated authority from the Chamber President, determined to reject the Application as being frivolous in terms of Rule 8(1)(a) of the Procedure Regulations.

Gerald McWilliams

G McWilliams
Legal Member

6th June 2019

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:-

A party 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 on request.