



**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

195 Ferry Road, Edinburgh, EH6 4NL ("the property")

**Case Reference: FTS/HPC/PR/20/2025**

**Sabryna Carroll Maclaren ("the applicant")**

**Azra Parveen ("the respondent")**

1. The application dated 20 September 2020 was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The applicant stated in the attached documents, which are referred to for their terms and held to be incorporated herein, that she moved out of the property on 3 July 2020. This was stated in the document "C) information of tenancy end through screenshots".

3. The application did not state an address for the respondent.
4. The FTT wrote to the applicant's representative on more than one occasion to request either the address of the respondent or an application for service by advertisement in terms of Rule 6 A of the Procedural Rules with the necessary information about steps taken to identify such an address. Although the applicant's representative finally lodged an application for service by advertisement on 3 November 2020, this did not meet the requirements and the applicant was advised by the FTT on 11 November 2020 to submit a tracing agent report or a report from Sheriff Officers within 14 days. To date no reply has been received. The period for lodging the documents has expired.

## **DECISION**

5. 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."*

6. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

### **REASONS FOR DECISION**

7. In terms of Rule 103 of the Procedural Rules an application under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 has to  
“(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”
8. In terms of regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011  
“an application under paragraph (1) must.....be made no later than 3 months after the tenancy has ended”.
9. In terms of rule 5 of the Procedural Rules (Requirements for making an application)  
“5.—(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.  
(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.  
(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated

powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this is the application and complete a request for service by advertisement in accordance with paragraph (5).

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

(8) The First-tier Tribunal must not grant the request where any – (a) documents requested under paragraph (3) are not received, or

(b) further steps directed under paragraph (6) are not taken. “

10. The application is rejected because the applicant has not provided the necessary information for lodging the application within 3 months in terms of regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011. The tenancy end is stated as 3 July 2020. Although the application reached the FTT on 20 September 2020, in the form it was made it could not be accepted as no respondent details were provided as required in terms of Rule 103 (a) (iii) of the Procedural Rules. In terms of Rule 5 (1) of the Procedural Rules an application is only held to have been made on the date it was received if at that time it was made in accordance with the relevant provisions in the applicable rule. The application did not meet the requirements of Rule 103 when it was originally lodged. The FTT advised the applicant of this requesting the missing details in terms of Rule 5 (3) of the Procedural Rules. An application for service by advertisement was not received until 3 November 2020 and even then not with information satisfying the FTT that sufficient efforts had been made to trace the respondent.

11. In terms of Rule 5 (3) of the Procedural Rules “the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement “. At the earliest the application

could be considered to fulfill the requirements of Rule 103 on 3 November 2020 as this was when the applicant made an application for Service by Advertisement. However, in terms of Rule 5(8) the applicant did not provide the further information requested regarding the application for service for advertisement in terms of Rule 5(3) by the deadline given in the last letter of the FTT.

12. As the applicant did not provide the further information, the Service by Advertisement request must be refused in terms of Rule 5(8) (a) of the Procedural Rules
13. Therefore the application is still not complete as the Service by Advertisement does not validly replace the requirement for the respondent's details on the application in terms of Rule 5(4) of the Procedural Rules.
14. An application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made within 3 months of the end of the tenancy. As at 3 December 2020 the application can still not be considered to fulfill all the lodging requirements and thus is still not validly made as stated in Rule 5(3) of the Procedural Rules. There is still no valid application for Service by Advertisement to replace the requirement for the respondent's address. The application cannot now be made within 3 months of the date of the end of the tenancy as today's date of 3 December 2020 is 5 months after the end of the tenancy.
15. It would not be appropriate for the FTT to accept an application that is made out with the statutory time frame stated in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

### **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  
3 December 2020