



**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
Case reference FTS/HPC/PR/22/2038

Parties

Mrs Elaine MacDonald (Applicant)

Mrs Nicola Best, Mr Keith Murray (Respondent)

20 Muirton, Aviemore, PH22 1SF (House)

1. The application was submitted to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 by the Applicant on 24 June 2022. The application was sent together with a copy of some pages of the tenancy agreement but an email regarding late payment of the deposit, although referred to in part 8 of form G, was not included. The end date of the tenancy was not stated in the application and no documentation indicating this

was provided, although the address of the Applicant in Glenrothes clearly was not the address to which the application related, which relates to a property in Aviemore.

2. On 29 June 2022 the FTT wrote to the first named Applicant requesting among other information the following:

“In order for the Tribunal to be able to process your application further please provide the undernoted information /documentation: 1. Please provide the end date of the tenancy and if available provide evidence of the end date such as a notice to quit or correspondence confirming the end date. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, otherwise the application will have to be rejected. “

3. On 14 July 2022 the Appellant replied to the FTT advising that the end date of the tenancy was 31 March 2022 and included an email dated 8 March 2022 from Elaine MacDonald to Nicola Best supporting this.
4. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

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. Relevant provisions:

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

9 (1) a tenant who has paid a tenancy deposit may apply to the First tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 of that tenancy deposit.

(2) an application under paragraph (1) must be made no later than 3 months after the tenancy has ended.

Reasons:

8. It would not be appropriate for the Tribunal to accept an application after the expiry of the period during which such an application can be made. The legislation is clear, in

terms of regulation 9 as set out above, an application under regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made no later than 3 months after the tenancy has ended.


9. Rule 103 c) of the Procedure Rules requires “evidence of the date of the end of the tenancy (if available)” to be provided with the application. In terms of rule 5 (3) “the application is 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.” Evidence of the end of the tenancy in the form of the email of 8 March 2022 was clearly available to the Applicant at the time the application was first lodged but had not been provided at the relevant time.
10. The tenancy ended on 31 March 2022. The date 3 months after that end date is 30 June 2022. The evidence for the end date of the tenancy was only provided on 14 July 2022 and thus at a time when the 3 month period for lodging an application under rule 103 stated in the Tenancy Deposit Schemes (Scotland) Regulations 2011 had already expired. The application was only complete on 14 July 2022 and thus made on that day.
11. There is no provision that would give the FTT the authority to extend the statutory time limit set out in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
12. 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
21 July 2022