



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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 1, 13D West Pilton Avenue, Edinburgh, EH4 4BX

**Case Reference: FTS/HPC/PR/21/3052**

**ADAM STOKES, NIALL STOKES, RAHELA WEIR ("the applicants")**

**GOLD AND GOLD GROUP LTD ("the respondent")**

1. An application dated 6<sup>th</sup> December 2021 was received from the first applicant, Adam Stokes, under Rule 103 of the Procedural Rules being an application for order for payment where landlord has not paid the deposit into an approved scheme. The following documents were enclosed with the application:-
  - (a) copy tenancy agreement, and
  - (b) copy bank statement.

By e-mail to the first applicant dated 10<sup>th</sup> December 2021, the Tribunal requested further information from the first applicant in terms of Rule 20. The Tribunal

requested the first applicant provide information about his co-tenants, the second and third applicants, and whether they wished to be added as applicants, and concerning when the end date of the tenancy occurred. The applicants responded to the Tribunal by e-mail received on 16<sup>th</sup> December 2021, indicating that the second and third applicants wished to be added as applicants, and that the tenancy ended on 8<sup>th</sup> September 2021.

## DECISION

2. 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."*

3. After consideration of the application, the attachments and correspondence, I consider 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**

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 I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
5. Regulation 9(2) of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* provides that an application such as this must be made no later than 3 months after the tenancy has ended. This is a mandatory requirement, and the Tribunal has no discretion to waive or extend it.
6. This application is dated 6<sup>th</sup> December 2018, and was received by the Tribunal on 9<sup>th</sup> December 2021. The applicants have advised that the end date of the tenancy was 8<sup>th</sup> September 2021. This application has therefore not been brought no later than 3 months after the tenancy has ended, and accordingly must be rejected for that reason.
7. Accordingly, this application has no prospect of success and must be rejected upon 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.

Neil Kinnear  
Legal Member  
17<sup>th</sup> December 2021