



**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/22/1178

Parties

Mr Joseph Hennell, Dr Brynley Lewis Pearlstone (Applicant)

Mr Raymond Levitus (Respondent)

3/2 78 Ferry Road, Glasgow, G3 8QX (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 first named Applicant on 26.4.2022. The application was sent together with a copy of a tenancy agreement, information from all three deposit schemes, the notice confirmation for the tenancy and a cover email. In the application the address for the landlord was stated as c/o Edzell Property Management, 1008 Pollockshaws Road, Glasgow G41 2HG.
2. On 3.5.2022 the FTT wrote to the first named Applicant in the following terms:

“Before a decision can be made, we need you to provide us with the following: 1. Please provide an address for the landlord. The c/o Edzell Property address you have provided is not sufficient. 2. We note there is a second tenant named on the lease. If the second tenant is to be party to the application, please provide her full name and address and her letter of authority for you to act on her behalf in this matter. Please reply to this office with the necessary information by 17 May 2022. If we do not hear from you within this time, the President may decide to reject the application. “

3. On 16.5.2022 the Appellant replied, providing the details of the second named Applicant and submitted a request for Service by Advertisement in terms of Rule 6A of the Procedural Rules. He stated he had checked the landlord register and the tenancy agreement and there was no other address stated on these sources.

4. On 19.5.2022 the FTT wrote to the Applicant in the following terms:

“Before a decision can be made, we need you to provide us with the following: 1. In order to accept an application for service by advertisement, you must show that you have made proper attempts to trace the landlord. This may include a tracing agency or sheriff officer. You may also wish to ask the letting agent for the landlord's address. 2. You should be aware that we must have a complete application within three months of the end date of the tenancy. The three months would appear to end on 28th May 2022. If we do not have the complete application at that time, your application will have to be rejected. You would be advised to deal with this matter urgently. Please reply to this office with the necessary information by 26 May 2022. If we do not hear from you within this time, the President may decide to reject the application.” A further letter requesting a reply was sent on 8.6.2022. No reply was received.

5. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

DECISION

6. 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."

7. 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

8. 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:

9. 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.
10. The tenancy ended on 28.2.2022.
11. Rule 103 (a) (iii) of the Procedure Rules requires “the name, address and registration number (if any) of the landlord” to be stated on the application. The c/o address of the letting agent was clearly not the actual address of the landlord.
12. The Applicants submitted a request for service by advertisement. This requires, as stated in rule 5 (5) that the request “must provide the details of any steps taken to ascertain the address of the party”. In terms of rule 5 (6) “the First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.” In this case the FTT advised the Applicants to provide a negative trace report and to make enquiries with the letting agent who had acted for the landlord. The letter to the Applicants stated clearly that a further reply was required prior to the 3 months period expiring. No such answer was forthcoming. The request for service by advertisement had not been accepted. The proper address for the Respondent has not been provided.
13. 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.” The application is currently still incomplete as it does not provide the address of the Respondent. The Applicants have not provided the information requested for the substitution of said address by service by advertisement documentation. The 3 months period after the end of the tenancy expired on 29.5.2022. By that date the necessary information was still outstanding and thus in terms of rule 5 (3) the application was not deemed to have been made by that date. 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. The application is made out with the 3 months period as it still incomplete on 28 June 2022.
14. It would not be appropriate to accept an application under rule 103 which does not

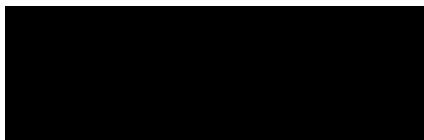
meet all the lodging criteria. The FTT had given the applicants repeated opportunities to complete the necessary documentation and to provide the necessary information. The FTT considers that the application cannot now be validly completed as the 3 months period after the end of the tenancy has expired. The Applicants have not provided the requested information regarding the service by advertisement request and have not provided the proper address for the landlord. They have not replied to the last two requests for further information by the FTT. It is now too late to do so. 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
28 June 2022