



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Rules")**

in connection with

21A Orchard Street, Falkirk ("the Property")

Case Reference: FTS/HPC/PR/21/2336

Susanne Heaney, 21A Orchard Street, Falkirk ("the Applicant")

Diane Fraser, 2 Callender Park Drive, Falkirk ("the Respondent")

1. The Applicant submitted an application in terms of Rule 68 of the Rules and Section 30 (2) of the Housing (Scotland) Act 1988 ("the 1988 Act"), stating that she was seeking compensation for a failure by the Respondent to lodge her deposit in a tenancy deposit scheme and provide her with a tenancy agreement. No documents were lodged with the application. A separate application was also submitted in terms of Rule 103. The application form indicates that the tenancy started on 27 November 2020.
2. The Tribunal issued requests for further information to the Applicant on 4 August, 29 September and 10 November 2020. The Tribunal indicated that Rule 68 only related to tenancies under the 1988 Act but that the Applicant's tenancy appeared to be a private residential tenancy, as it started after 1 December 2017. The Applicant was asked if she wished to amend the application to Rule 105 and notified that certain documents would have to be submitted if this was the case. Otherwise, the Applicant was directed to explain

why the application could proceed in terms of Rule 68. No response has been received to any of the requests.

DECISION

3. The Legal Member considered the application in terms of Rule 8 of the Chamber 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.”

- 4. After consideration of the application and documents lodged in support of same the Legal Member considers 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

5. The Applicant submitted an application in terms of Rule 68 of the Rules. This Rule relates to applications in terms of Section 30(2) of the 1988 Act by tenants of assured tenancies for an order which requires a landlord to provide them with a tenancy agreement and rent book. The Applicant did not lodge any documents with the application but stated that the tenancy started on 27 November 2020. In terms of Part 1 of Schedule 5 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”), a tenancy cannot be an assured tenancy if it is granted after 1 December 2017, when the 2016 Act came into force. It therefore appears that the Applicant’s tenancy is a private residential tenancy in terms of the 2016 Act. If so, the provisions of Section 30(2) of the 1988 Act and Rule 68 do not apply. The Tribunal has provided the Applicant with three opportunities to amend the application or provide further information to establish that the application is competent, but she has failed to respond.
6. As the application appears to be incompetent, and as the Applicant has failed to provide further information to clarify the validity of the application, the Legal Member determines that the application is frivolous and misconceived, with no prospect of success. The application is rejected on that basis. .

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.

Josephine Bonnar, Legal Member
8 December 2021