

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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 3F3, 26 Marchmont Crescent, Edinburgh, EH9 1HG

**Case Reference: FTS/HPC/PR/19/0517**

**Mr Hans Wilke, Flat 3F3, 26 Marchmont Crescent, Edinburgh, EH9 1HG ("the applicant")**

**Mrs Lena Jean Nagle, Stumpers, Pine Avenue, Camberley, Surrey, GU15 2LY ("the  
respondent")**

1. On 18 February 2019 an application was received from the applicant. The application was made 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:-
  - Copy Tenancy Agreement
  - Copy email correspondence between the applicant and respondent

At section 7(c) of the application form (details of the order being sought from the Tribunal) the following detail is provided:

*"I would like explanation of why the deposit was left unsecured past the 30 working day limit and why every detail supplied (name, email, reference number) was incorrect. I would like explanation why I was never informed of the details of the scheme. I have read on the tribunal website of a previous decision relating to this landlord that there appeared to be similar behavior with respect to deposits and this is troubling for the future return of this deposit."*

By letter dated 6 March 2019, the Tribunal referred the applicant to the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("The 2011 Regulations") and requested further information from the applicant in the following terms:

*"Your application appears to request only an explanation, seeks no payment from the landlord, and appears to accept that you have now received the appropriate information that the landlord is required to provide. You should provide clarification as to the terms of the order you seek, with reference to those competent under regulation 10 of the 2011 Regulations.*

*Further, in regard to background information on your application is further unclear as you do not:*

- *State when you paid the deposit (or provide any evidence of paying a deposit).*
- *Provide a copy of the Deposit Notification from the deposit scheme provider.*
- *State whether or not you remain at the property and, if not when you left."*

The Tribunal asked to receive the further information within 14 days. The applicant was advised that, after that time, his application would be passed to a Legal Member for

further consideration whether to accept or reject the application. There has been a failure to respond to this request for further information.

## 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 from the

applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

## **REASONS FOR DECISION**

4. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
5. The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
6. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

## **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.

A Mathie

Anne Mathie  
Legal Member  
29 March 2019

