



**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 Procedure Rules")**

in connection with

114/3 Marchmont Road, Edinburgh ("the Property")

Case Reference: FTS/HPC/PR/23/0257

Samuel Appleby, 2 MacBean Road, Kinraig, Kingussie ("the Applicant")

Craig Cameron, Flat 6, Royal Apartments, 5 Union Street, Dundee ("the Respondent")

1. The Applicant lodged an application by email on 17 January 2023, seeking an order in terms of Rule 103 of the Procedure Rules and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The application was lodged with several documents, including a tenancy agreement. No information or evidence was submitted regarding the date that the tenancy ended.
2. The Tribunal issued a request for further information with regard to the end of the tenancy. The Applicant was also notified that the application and all required documents had to be submitted no later than three months after the tenancy ended. The Applicant responded on 7 February 2023 and provided a copy of an email to the Respondent dated 11 October 2022 which states that the Applicant and joint tenant would vacate the property the following Friday. The Tribunal requested clarification of the date and indicated that if the tenancy had ended on 14 October 2022, the time limit in the Regulations had not been

met and the application may be time barred. The Applicant provided a further response on 13 February 2023. He confirmed that the tenants had moved out of the property on 14 October 2022 but that no formal notice had been given and that they had been entitled to remain in the property until a Notice had been served and the notice period had elapsed.

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 there is good reason to believe that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Rules.**

Reasons for Decision

5. Regulation 3 of the 2011 Regulations states - “(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy – (a) pay the deposit to the scheme administrator of an approved scheme.” Regulation 9 of the 2011 Regulations states – “(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 in respect of that tenancy deposit. **(2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended**”
6. Rule 5(1) of the Rules states that an “application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in the.. “ relevant rule. Rule 103 states that an application must be accompanied by “evidence of the date of the end of the tenancy, (if available)”.
7. The application is rejected for the following reasons
 - (i) The tenancy ended on 14 October 2022, when the Applicant and joint tenant vacated the property. The Legal Member is not persuaded by the argument that the tenancy did not terminate on this date, because the Landlord failed to follow the correct process. If a Notice to leave was not served then the tenants did not require to vacate the property. Even if a Notice had been served, the tenants would have been entitled to remain in the property until an eviction order had been granted by the Tribunal. However, the Applicant chose to vacate the property after he had been asked to do so. The tenancy ended on that date and the Respondent recovered possession of the property.
 - (ii) The application was not lodged until 17 January 2023. This was more than 3 months after the tenancy had ended.
 - (iii) Even if the application had been lodged before the 3 month time limit had passed, the application did not meet the “mandatory requirements for lodgement” (Rule

5(2)) until 7 February 2023.

(iv) The Tribunal has no discretion to extend the time limit specified in the Regulations

8. As the Applicant has failed to comply with the time limit specified in the Regulations, the Legal Member determines that there is good reason to believe that it would not be appropriate to accept the application. 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.

J Bonnar

Josephine Bonnar
Legal Member
20 March 2023