



**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

167 Lanark Road West, Currie, Edinburgh, EH14 5NZ (the property)

Case reference FTS/HPC/PR/22/0293

Parties

Mrs Juliet Ogbeni (Applicant)

Mr John MacLennan, Mrs Reta MacLennan (Respondent)

1. On 2 February 2022 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application by the Applicant. The application was made under Rule 103 of the Rules of Procedure. The application gave no information about the end of the tenancy and did not include the tenancy agreement. The application gives the information that the address of the property is that of the Respondent and that the application relates to repayment of rent and the deposit for the property by the Applicant’s daughter.
2. On 4 February 2022 the FTT wrote to the Applicants: *“1. An application under Rule*

103 and on Form G can only be used to claim a penalty for a failure by a landlord to lodge a tenancy in a tenancy deposit scheme. If you are seeking repayment of rent and deposit you are required to submit an application under Rule 111 and Form F (a civil application). Information can be found on the Tribunal website. 2. If you are also seeking a payment for a failure to lodge the deposit in a relevant scheme please provide an amended application for G which states this. You must delete the reference to rent and repayment. 3. For both an application under Rule 103 and Rule 111, please note that the Tribunal only has jurisdiction to deal with certain types of tenancy. You have indicated that the Respondents reside at the property which is the subject of the application. If the landlords are resident (and the tenant was therefore a lodger at the property) the tribunal does not have jurisdiction and an application for repayment must be made to the Sheriff Court. Please confirm the position of you wish to proceed or advise if you wish to withdraw the application. 4. If the application is proceeding, it must be made by the former tenant. Please ensure the application forms provide the tenant's details as Applicant. 5. Please provide a copy of the tenancy agreement if one was provided. 6. Please provide evidence of the end of the tenancy, if available.”
No reply was forthcoming.

3. On 23 February 2022 the Applicant was asked to provide a reply to the above request. No reply was forthcoming.
4. Finally on 7 March 2022 the FTT again wrote to the Applicant again requesting the Applicant to deal with the further information request and provide the missing information and documentation by 14 March 2022. No reply was received.
5. All documents are referred to for their terms and held to be incorporated herein.

B DECISION

1. 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."

- 2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65**First-tier Tribunal orders]) of the 2011 Regulations, the application must—

(a) state—

(i) the name and address of the tenant or former tenant;

(ii) the name, address and profession of any representative of the tenant or former tenant; and

(iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c) evidence of the date of the end of the tenancy (if available); and

(d) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Requirements for making an application

5.—(1) 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 rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be 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.

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

(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.”

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules and Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Both provisions clearly state that such an application has to be made by a tenant or former tenant. The Applicant is the mother of the former tenant of the property and as such not a person who can competently lodge such an application. In terms of Rule 103 (d) the signature of the tenant or former tenant or authorized representative is a requirement of a competent application. The Applicant is neither a tenant, former tenant of the property, nor has she provided authorization by the tenant or former tenant. This was made clear in the letter of the FTT of 4 February 2022 and the Applicant was given the opportunity to act on that information. She did not do so.
2. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(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.” Regulation 10 then states: “If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit...” The application describes that the order the Applicant is seeking is repayment rather than a penalty in terms of Regulations 9 and 10. The Applicant was advised to either amend the application so that the order sought would be congruent with the said Regulation. She did not do so.

3. The Applicant failed to provide documentation and information which is required in terms of Rule 103 (b) and (c) despite having been given the opportunity on 3 occasions.
4. For the above reasons the application has not been competently made and thus it would not be appropriate for the FTT to accept it.

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
16 March 2022