

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF SHIRLEY EVANS, 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

7 Glamis Lane, Blantyre, Glasgow, G72 OTU

Case Reference: FTS/HPC/PR/19/0315

Lauren Campbell ("the applicant")

Stuart Douglas ("the respondent")

1. On 31 January 2019 an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules being an application for payment where a Landlord has not paid a deposit into an approved scheme. The following documents were enclosed with the application:-

- A Tenancy Agreement signed and dated 20 April 2015
- Undated emails from Safe Deposits Scotland, My Deposits and Letting Protection Service Scotland.

By email and letters dated 12 and 26 February 2019 the Tribunal requested further information from the applicant with regard to when the tenancy agreement with the Respondent terminated. The applicant advised by way of an email dated 26 February 2019 that the tenancy ended on 25 June 2018.

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 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 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 confirmed in her email to the Tribunal that the tenancy agreement terminated on 25 June 2018. The application to the Tribunal was received on 31 January 2019. The Tribunal requires to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that confirmation from the applicant that the tenancy had ended on 25 June 2018 gives me good reason to believe that it would not be appropriate to accept the application as it has no prospect of success.
6. The application was made under Regulation 9 (1) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (the 2011 Regulations"). The application was based on the Respondent's alleged failure to pay the tenancy deposit into an approved scheme as required under Regulation 3. The Tribunal noted that in terms of Clause 2(b) of the tenancy agreement the applicant was required to pay a "security fee" of £1000 payable at entry on 4 May 2015. The Tribunal also noted that the emails produced by the applicant from the three approved schemes namely Safe Deposits Scotland, My Deposits and Letting Protection Service Scotland showed that they had no record of any deposit being paid in relation to the applicant.
7. Under Regulation 9 (2) any application made under Regulation 9(1) must be made no later than 3 months after the tenancy ended. The tenancy ended on 25 June 2018, but

unfortunately the application was not made to the Tribunal within three months of that date and was not received until 31 January 2019, nearly 7 months after the tenancy had ended. The application is accordingly time barred in terms of Regulation 9(2) of the 2011 Regulations. I consider the application has no prospects of success.

8. 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.
9. I would add that whilst the Tribunal has rejected this particular application as being time barred under Regulation 9(2) the 2011 Regulations, this may not preclude the applicant from raising a separate action for the recovery of the deposit.

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.


Shirley Evans
Legal Member

Date 6 March 2019.