



**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

0/1 22 Espedair Street, Paisley ("the Property")

Case Reference: FTS/HPC/PR/22/0971

Billy Paisley, 0/1 22 Espedair Street, Paisley ("the Applicant")

Victoria Letting, 4 Chancellor Street, Glasgow ("the Respondent")

1. On 4 April 2022, the Applicant submitted an application to the Tribunal 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 Applicant stated that he was seeking an order against the Respondent for failure to lodge his deposit in an approved scheme within 30 days of the start of the tenancy.
2. On 7 April 2022, the Tribunal issued a request for further information. The Applicant was notified that applications under the 2011 Regulations could only be made against a landlord, not a letting agent. He was asked if he wished to amend the application. The Applicant did not respond. Two further letters were issued on 4th and 31st May 2022, directing the Applicant to provide a response or the application may be rejected. The Applicant failed to respond and has not submitted an amended application.

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. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. 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." Regulation 10 states that if the Tribunal is satisfied that a landlord did not comply with any duty in regulation 3 the Tribunal "(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit".
7. An application under the 2011 Regulations is only competent if it is made against a landlord, as the regulations only apply to landlords and not to letting agents who manage property on behalf of a landlord. As the application specifies the letting agent for the property as Respondent, the application is incompetent. The Applicant has been offered three opportunities to amend the application, but has failed to do so.
8. As the application is incompetent, the Legal Member determines that the application is frivolous, misconceived and has 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
10 June 2022