



**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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 Rules")**

in connection with

2/5 Mercat Gate Court, 6 Walls Street, Glasgow, G1 1PA ("the Property")

Case Reference: FTS/HPC/PR/22/3576

**Ms Sophie Louise Angus, 26 1F4 Springvalley Terrace, Edinburgh, EH10 4PY
("the Applicant")**

**Mrs Cheryl Campbell, 2/2, 18 Newburgh Street, Glasgow, G43 2XR ("the
Respondent")**

1. The Applicant seeks an order in terms of Rule 103 of the Rules and Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant lodged a tenancy agreement, documentary evidence of payment of a deposit, email and text correspondence between the Applicant and Respondent and confirmation from two scheme administrators that the deposit was not secured in their schemes.

DECISION

2. 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.

- 3. After consideration of the application and the documents submitted by the Applicant 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

4. '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.

5. The email and text communication between the Applicant and Respondent discloses that the Applicant vacated the property on or around 21 August 2021 and the remaining tenant vacated the property on or around 21 September 2021.
6. Regulation 9 of the 2011 Regulations provides:

“(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.”

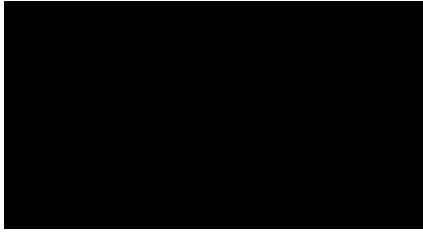
7. The present application was submitted to the Tribunal on 29 September 2022, which was well beyond the 3 month time limit set out in Regulation 9. The terms of Regulation 9 are mandatory and there is no discretion to extend the period for making an application. The application is therefore timebarred and cannot succeed.
8. The Legal Member therefore 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.



Nicola Irvine
Legal Member
14 October 2022