



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER, 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

21/12 Viewforth Terrace, Edinburgh, EH10 4LJ

**Case Reference:** FTS/HPC/PR/21/2801

Bernadette O'Rourke ("the Applicant")

David Stenhouse ("the Respondent")

DJ Alexander ("the Respondent's Representative")

1. On the evening of 10<sup>th</sup> November 2021 an application, which was signed and dated 10<sup>th</sup> November 2021, was received from the Applicant Ms O'Rourke by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT). The application was made under Rule 103 of the Rules of Procedure. The details of the Respondent on the application were stated as DK Alexander who are stated as the letting agents. No tenancy agreement was provided with the application and the Applicant did not provide evidence of the date of the termination of the tenancy.
2. On 15<sup>th</sup> November 2021 the FTT wrote to the Applicant seeking clarification on the identity of the Respondent and asking for her to provide a copy of the tenancy agreement and evidence with regard to date of the end of the tenancy.
3. On 15<sup>th</sup> November 2021, the applicant responded and advised that the tenancy had ended on 12<sup>th</sup> August 2021. No copy of the tenancy agreement was ever

provided to the FTT.

4. On 16<sup>th</sup> November 2021, the FTT wrote to the Applicant in the following terms:  
*“You have advised that the tenancy ended on 12th August it would therefore appear that your application is time barred as we require to receive all information required for the application within 3 months of the end of the tenancy, including a copy of the tenancy agreement and evidence of the end of the tenancy if available as well and you have not provided this yet. You have also applied for an order against the letting agent. Please advise if you now wish to withdraw your application or please provide any submissions as to why you believe your application should be accepted and if so please provide the rest of the information previously requested. If you do not ask for it to be withdrawn it is likely the application will have to be rejected.”*
5. On 16<sup>th</sup> November 2021, the Applicant wrote to the FTT in the following terms:  
*“Thank you. My understanding was that the submission need to be lodged with you before the 12th November which I did.”*

## **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 ( 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. Rule 103 (b) of the Procedural Rules states that such an application must 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. The Applicant has provided no copy of the tenancy agreement or information regarding same.
2. The application did not state when the tenancy ended and the Applicant advised on 15<sup>th</sup> November 2021 that the tenancy had ended on 12<sup>th</sup> August
3. 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...”
4. As the tenancy ended on 12<sup>th</sup> August 2021 the application would have to have been made by 12<sup>th</sup> November 2021 to be a valid application.
5. The application form was submitted by email of 10<sup>th</sup> November 2021 but at that point was clearly incomplete as it did not state the end date of the tenancy and

did not provide a copy of the tenancy agreement or information about the end date of the tenancy. The FTT wrote to the Applicant asking for this information. The FTT did not know, when it wrote to Applicant on 15<sup>th</sup> November 2021, that the end date of the tenancy was more than three months prior to its letter.

6. When the date of the end of the tenancy was received by the FTT, this date was already after the 3 months' time limit for the application to have been submitted.
7. In terms of Rule 5 (3) of the Procedural Rules "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." In terms of Rule 5 (3) of the Procedural Rules the necessary information was not received until 26 July 2021 at the earliest. However, after 18 July 2021 it was too late to make a valid application to the FTT under Rule 103 because of the clear time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and the definition of the date when the application is made as stated in Rule 5 (3).
8. It would not be appropriate for the Tribunal to accept an application which is made out with the 3 months' time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
9. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: "*[1] The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and subordinate legislation in the form of regulations made by the Scottish Ministers. In UT60 [2019] Sheriff Di Emidio states at paragraph 14: "It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT's decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant."*
10. The original application, whilst made within the 3 months period, was incomplete. The tenancy agreement or information about the tenancy was never provided. The date of the end of the tenancy was only provided after the period of 3 months had expired and thus the application, which in terms of Rule 5 (3) is considered to be made when the application documents are finally complete, has to be rejected as having been made after the period stated in Regulation 9 expired.

## **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.**

Martin J. McAllister  
Legal Member  
18<sup>th</sup> November 2021