



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

11 Oxgangs House/Oxgangs Grove, Edinburgh, EH13 9HE ("the Property")

Case Reference: FTS/HPC/PR/20/0223

Mr Mateusz Kulczynna, 7/9 Albion Place, Edinburgh, EH7 5QR ("the Applicant")

**Mr Mohammed Shabir, 11 Oxgangs House/Oxgangs Grove, Edinburgh, EH13 9HE
("the Respondent")**

DECISION

**It was determined by the Legal Member acting under the delegated powers of
the Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the
Application must be rejected in terms of Rule 8(1).**

REASONS

1. On 23 January 2020, an application dated 19 January 2020 was received from the Applicant ("the Application"). The Application was made under Rule 67 of the 2017 Rules, being an application where a landlord and tenant cannot agree the amount payable by the landlord to the tenant under section 22(1) of the Housing (Scotland) Act 1988 ("the 1988 Act"), either the landlord or the tenant may make an application under section 22(2) (payment of removal expenses in certain cases) of the 1988 Act.

2. An application made in terms of Rule 67 and Section 22(1) of the 1988 Act must
 - (a) state—
 - (i) the name, address and registration number (if any) of the landlord;
 - (ii) the name, address and profession of any representative of the landlord;
 - (iii) the name and address of the tenant;
 - (iv) the name, address and profession of any representative of the tenant; and
 - (v) the details of the tenant's claim for expenses, reasons for disagreement and proposals for settlement; and
 - (b) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.
3. The Applicant submitted two documents with the Application, which were said to be the first and last page of a tenancy agreement, which were treated as part of the Application paperwork.
4. On 3 February 2020, the Application paperwork was considered by a legal member of the tribunal with delegated powers of the Chamber President. The legal member determined, in terms of Rule 5 of the 2017 Rules, that the Application had not been lodged in the manner set out in Rule 67 of the 2017 Rules. The legal member requested further documents from the Applicant in accordance with Rule 5(3) of the 2017 Rules.
5. By letter of 3 February 2020, the Tribunal informed the Applicant that the following further information was required from him before the Application can proceed to the Chamber President for consideration:
 - a. *“We have considered your application and note that although the tenancy was in the joint names of yourself and Joanna Boyarlzuk it is only yourself making the application. Either the application will require to be amended to include Ms Boyarlzuk as a joint Applicant or we shall require signed confirmation from her that she is in agreement that the application should run in your name alone.*
 - b. *You have made the application under Rule 67 but as your application relates to a failure on the part of the Respondent to lodge a deposit in a Tenancy Deposit Scheme it may be that Rule 103 is more applicable. You have also stated that you are looking to have your deposit returned in which case it may be that Rule 111 would be applicable. Rule 67 is in respect of claims for removal expenses under Section 22 of the Housing (Scotland) Act 1988. Although it appears you were given and signed a Short Assured Tenancy Agreement under that Act Short Assured Tenancies were abolished for new tenancies with effect from 1 December 2017 and the tenancy created when you moved into the property would*

have been a Private Rented Tenancy under the Private Housing (Tenancies)(Scotland) Act 2016. You should therefore amend your application to be under rule 111 or 103. If you decide to amend your application to be under Rule 103 it would be open to you to make a second application if you wished under Rule 111 but this would require you to complete a further application form. The application cannot proceed further in its current form therefore please let us know how you wish to proceed.

c. We have also noted that you have provided the Respondent's address as 11 Oxgangs House, Oxgangs Grove Edinburgh but that was also the address of the property you were renting. Can you please confirm that this is the current residential address of the Respondent and not just a property he rents out. Any documents to be served on the Respondent require to be sent to him at his home address.

6. The Applicant was asked to reply to the tribunal's office with the necessary information by 17 February 2020, otherwise the Application may be rejected.
7. The Applicant replied by email of 11 February 2020, acknowledging the tribunal's request for further information and stating that he would provide the required information.
8. The Applicant did not send a further response or provide the required information within the time stipulated.
9. On 27 February 2020, the Application paperwork was considered by a Legal member with delegated powers of the Chamber President. On 2 March 2020, the Tribunal informed the Applicant that the following further information was required from him before the Application can proceed to the Chamber President for consideration, as follows:

"We refer to your email of 11 February 2020 in which you advised that you would send on amended documents that day. However we have not received anything further from you.

The Tribunal is prepared to allow you a final opportunity therefore please confirm if you wish to continue with your application and if so provide a response on the points raised in our letter of 3rd February 2020 (copy enclosed) together with an amended application.

Please respond within fourteen days of the date of this letter failing which your application may be rejected by the Chamber President.

*Please reply to this office with the necessary information by **3 March 2020**. If we do not hear from you within this time, the President may decide to reject the application."*

10. The Applicant did not respond and did not provide the required information within the time stipulated.
11. Due to the Covid-19 pandemic, and the resulting temporary closure of the tribunal

offices, the Application was considered by the Chamber President on 8 July 2020. On 9 July 2020, a further letter was sent to the Applicant, as follows:

“Good Afternoon

I refer to the attached letter dated 02 March 2020, which was sent to you via email on the same date.

We have yet to receive a response from you.

Please respond with the next 7 days otherwise the President may choose to reject your application.”

12. The Applicant did not respond and did not provide the required information within the time stipulated.
13. On 17 August 2020, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 67 of the 2017 Rules.
14. Rule 8 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.”

15. After consideration of the Application, the attachments, and the further information requests, it was determined that the requirements for making an application under Rule 67 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 67. Other than his email of 11 February 2020, in which he stated that he would provide further information, the Applicant has not responded to the

tribunal's repeated requests to provide further information and he has not provided the required information within the stipulated timescales. One of those requests was that the Applicant should confirm if he wishes to request to amend the Application to proceed under Rule 111 and/or Rule 103 rather than Rule 67. No request has been made to amend the Application to proceed in terms of Rules 111 and/or Rule 103 and in any event, the requirements for making such an application(s) are not met and the tribunal's requirements for further information have not been met by the Applicant. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

16. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

S Tanner

Ms. Susanne L. M. Tanner Q.C.

Legal Member

17 August 2020