



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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

12B Avon Street, Hamilton, ML3 7HU ("the property")

Case reference FTS/HPC/PR/21/0507

The parties:

Parties

Mr Luke Johnstone (Applicant)
Mr George Irving (Respondent)

A BACKGROUND

1. On 5 March 2021 the applicant's representative Mr Clayson, Hamilton Citizens Advice Bureau lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 103 of the Procedural Rules. The application stated that the tenancy ended on 7 December 2020 and a cover email advised that "The supporting documents will be sent in separately. "
2. On 8 March 2021 the Tribunal wrote to the Applicant's representatives "Please note, we have yet to receive the supporting documents referenced in your application email and application".

1. On 18 March 2021 the Tribunal emailed the Applicant's representatives the following request: " When you submitted the application on 5 March 2021 you stated that the supporting documents would be sent in a separate email. On 8 March 2021 we notified you that these had not been received. Please provide the documents and evidence that these were sent on 5 March 2021. Please note that an application under Rule 103 which complies with the mandatory requirements of that Rule has to be lodged within 3 months of the end of the tenancy. Please also provide evidence of the end of the tenancy. Please reply to this office with the necessary information by 1 April 2021. If we do not hear from you within this time, the President may decide to reject the application. " No reply was received.
2. On 19 April 2021 the FTT sent a further email to the Applicant's representative stating: "I refer you to our letter of 18 March 2021, a copy of which has been attached for your reference. The Legal Member has allowed a further 14 days for reply (by 3 May 2021) for the requested information, failing which your application may be refused."
3. On 29 April 2021 the following answer was received: "I refer to previous correspondence and in particular to the request for further information. I now attach: Screenshot of text message exchange between the Landlord and Tenant confirming that the last date of the tenancy was 7th December 2020. 2. Partial copies of the tenancy showing the date of the agreement and the subjects of the tenancy. I trust that this will be sufficient to show that the Application which was sent on 5th March 2021 was within the 3 month period set down in the regulations."
4. The documents stated in the email were attached to said email.

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 (**[F65**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.

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (b) and (c) of the Procedural Rules states that such an application must be accompanied by a copy of the tenancy agreement... and evidence of the date of the end of the tenancy.
2. The application information states that the tenancy ended on 7 December 2020. In terms of Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.”
3. In this case if the tenancy ended on 7 December 2020 the application would have to have been made on 7 March 2021 to be a valid application.
4. The application form was submitted by email of 5 March 2021 but the lodging requirements of supplying a tenancy agreement and evidence of the end date were not met at that time. At that time the application was not validly made.
5. The FTT gave the Applicant’s representative several opportunities to submit the relevant documentation, which the FTT expected to have been submitted in a separate email to the original application. The FTT first advised the representative on 8 March 2021 that the accompanying information, which was meant to arrive in a separate email, had not been received. It then wrote to the representative again on 18 March 2021 requesting the missing documents and advising that proof would have to be submitted that the missing information had been lodged by 5 March 2021 as stated in the original email. This did not trigger a reply. Finally the FTT again sent the letter of 18 March 2021 and

extended the time for a reply to 3 May 2021. The FTT had already made it clear to the representative that the onus was on the Applicant to show that the missing information had been submitted in time, referring specifically to the time limit for these type of applications.

6. Had the missing documents been submitted by 7 March 2021 and for some reason the email/letter had been not identified by the FTT until later, the application would still have been complete.
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 this case that date was 29 April 2021, as the documents had finally been submitted on that date. Unfortunately for the Applicant, in terms of Rule 5 (3) of the Procedural Rules by then it was too late to make a valid application to the FTT under Rule 103 because of the clear definition of the date when the application is made as stated in Rule 5 (3) and of the time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011
8. It would not be appropriate for the Tribunal to accept an application has been made out of time. The application is thus rejected.

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.



Legal Member
10 May 2021