



**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**

**Ref: FTS/HPC/PR/21/1176**

**1 Springfield, Flat 402, Glasgow, G31 4HS ("the Property")**

**Mr Reetsang Matlhare, 45 Millbrae, Glasgow, G42 9UF ("the Applicant")**

**Ms Omoribake Ikumoluyi, 1 Springfield, Flat 402, Glasgow, G31 4HS ("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 15 May 2021, an application was received from the Applicant's Representative ("the Application"). The Application was made under Rule 103 of the 2017 Rules, being an application for an order for payment where a landlord has failed to carry out duties in relation to no such evidence or documents were attached to the Application.

2. An application made in terms of Rule 103 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.*

3. The Applicant submitted an incomplete application and it was not accompanied by all of the required documents.

4. On 26 May 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

*“Before a decision can be made, we need you to provide us with the following:*

*1. You have applied under Rule 103 which is for a penalty for failure to lodge a tenancy deposit in a tenancy deposit scheme however in Section 5 of the application form you say you are seeking the return of the deposit can you please confirm which it is you are applying for? If you are applying for a penalty then please amend section 5 c to state that and if you wish to seek the return of your deposit you can apply for this by applying under Rule 111 and using Form F which you will find on our website. If you only wish to apply for the return of the deposit please confirm this and apply under Rule 111. If you wish to apply for both then please amend this application to confirm you are seeking a sum in respect of a penalty and please also lodge an application under rule 111 for the return of the deposit.*

*2. You appear to have put the Landlord’s name in the box for the Respondent’s representative, can you please amend this by supplying a new application form with the Respondent clearly named in Section 3.*

*3. Can you please clarify the Respondent’s address? The address you have given for the landlord appears to be the same as the property address can you please advise if you believe that is where the landlord is staying or please supply another address? We require to be able to serve the papers on the landlord at their own address.*

*Can you please provide a copy of the tenancy agreement if you have one or if you don't please give details of the tenancy including when it started when it ended and what the rent and deposit was? Please provide evidence of the end of the tenancy.*

5. *Please confirm when you paid the deposit and please provide evidence of this if possible.*
6. *Finally if you have any evidence the deposit was not paid to a tenancy deposit company could you please provide this?*

*Please reply to this office with the necessary information by 9 June 2021. If we do not hear from you within this time, the President may decide to reject the application.*

7. The Applicant failed to respond to the request for further information within the stipulated timescale. On 7 June 2021, the tribunal's administration received an email from an email address not included in the Application, which stated: *"Hey Laura these are my documents"*.

8. On 8 June 2021, the tribunal's administration sent an email to the Applicant stating:

*Good morning,*

*We have received an email from 'jayjaymatlhare@gmail.com' containing documents in relation to the above case as well as a new application form.*

*Please note that all documents must be submitted from a named party in a case or a party with written authorisation to do so.*

*Can you please confirm if you are happy for the documents received from the above contact to be processed?*

*Yours Sincerely,*

9. On 8 June 2021, the Applicant responded by email, stating:

*Good Day, I'm happy for the documents received from the above contact to be processed.*

*Contact: Reetsang Matlhare*

10. The documents submitted comprised: a second Application for civil proceedings on Form G for return of a deposit, a tenancy agreement and a copy message (undated). The tribunal processed the civil application separately under case reference CV/21/1366.

11. On 21 June 2021, the Application in terms of Rule 103 was considered by a legal member acting with the delegated power of the Chamber President and a letter was sent to the Applicant as follows:

*Before a decision can be made, we need you to provide us with the following:*

*PR/21/1176*

*(1) The Tenancy agreement and text messages which you have now provided appear to show that the Respondent was a resident landlord in the same property during your tenancy in which you rented a room with shared facilities.*

*However, the tribunal has carried out a title deed check for the rented property which shows that OMORIBAKE IKUMOLUYI also has an address at Flat 0/3, 19 Springfield Gardens, Glasgow, G31 4HT.*

*Please can you confirm whether the Respondent was a resident landlord in the same property as the room with shared facilities that you lived in during the tenancy. If so, please consider whether you wish to withdraw the application under Rule 103 as the 2011 Regulations do not apply to tenancies where the landlord is resident in a property which shared facilities with the rental property.*

*(2) If the landlord was not a resident landlord and you do wish to proceed with Application under Rule 103, further information is required:*

- a. Please provide proof that the deposit was paid to the landlord, if available;*
- b. please confirm the Respondent's current address for service of tribunal documents; and*
- c. Please provide proof of the end date of the tenancy.*

*...*

*Please reply to this office with the necessary information by 5 July 2021. If we do not hear from you within this time, the President may decide to reject the application."*

12. The Applicant failed to respond.

13. On 22 July 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, and a letter was sent to the Applicant in the following terms:

*"Before a decision can be made, we need you to provide us with the following:*

*We refer to our letter to you dated 21st June 2021, a further copy of which we enclose, and note that we have not received a reply from you.*

*Could you please respond to the matters raised in that letter within 7 days of this letter or the Tribunal may well reject your application.*

*Please reply to this office with the necessary information by 29 July 2021.*

*If we do not hear from you within this time, the President may decide to reject the application.”*

14. The Applicant did not respond to the request for further information within the stipulated timescale.

15. On 10 August 2021, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.

16. 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."*

17. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's repeated failures to respond, it was determined that the requirements for making an application under Rule 103 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 103. The Applicant has failed to respond to the tribunal's further

information requests. The Applicant has not provided the required information within the stipulated timescales. 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).

#### **18. 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.



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

Legal Member

10 August 2021