



**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

46 Lilybank Crescent, Forfar, DD8 2JA (the property)

Case reference: FTS/HPC/PR/22/0767

Parties

Miss Lindsay Carr (Applicant)

Direct Lettings (Respondent)

1. On 16 March 2022 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application from the Applicant. The application was made under Rule 103 of the Rules of Procedure. The application gave no information about the end of the tenancy and was directed against the Letting Agent Direct Lettings. The application gives the information that the address of the property is different from the Applicant’s current address stated as her details on the form.
2. On 18 March 2022 the FTT wrote to the Applicant: *“1. Please confirm the end date of the tenancy or if the tenancy is ongoing; 2. Please provide the name and address of the Respondent. The application cannot be made against the Letting Agent; 3. Please confirm the amount of the deposit paid and provide proof of payment.”* Included in

the letter was the information that an application under rule 103 can only be made for 3 months after the tenancy has ended. A reply was requested by 1 April 2022. No reply was forthcoming.

3. On 6 April 2022 the Applicant was asked to provide a reply to the above request in a further letter setting out the outstanding information and the options of service by advertisement in the event that the Applicant does not know the landlord's address. The Applicant was advised that without the outstanding information the application would not be competent. A reply was requested by 13 April 2022. No reply was forthcoming.
4. All documents are referred to for their terms and held to be incorporated herein.

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 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Court orders

10. 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; and

(b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Both provisions show that such an application has to be made by a tenant or former tenant against a landlord. The application was made against Direct Lettings. In clause 2 of the tenancy agreement lodged by the Applicant Direct Lettings are clearly identified as the Letting Agent. In Clause 3 of the tenancy agreement the landlord is stated to be Mrs Alison Orr. The application thus does not meet the requirements of rule 103 (a) (iii) as it does not provide the landlord details. Regulation 10 only gives the FTT the power to make an order against a landlord. Thus an application against the Letting Agent cannot lead to a competent order under Regulation 10.
2. The application does not meet the lodging requirement stated in rule 103 (c) as the Applicant has not provided the end date of the tenancy although it is clear from the application information that she now resides at a different address.
3. The Applicant failed to provide documentation and information which is required in terms of Rule 103 (a) and (c) despite having been given the opportunity to do so on 2 occasions. She has not replied to the FTT's requests for further information despite the FTT having advised her of the possibility that the application may be rejected in those circumstances.
4. For the above reasons the application has not been competently made and thus it would not be appropriate for the FTT to accept it.

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.

Petra Hennig McFatridge
Legal Member
19 April 2022