



**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

**3/5, 23 Oswald Street, Glasgow, G1 4PE (the property)**

Case reference FTS/HPC/PR/22/2205

**Parties**

**Miss Kim Griffin (Applicant)**

**Infiniti Properties (Respondent)**

1. On 6 July 2022 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application by the Applicant. The application was made under Rule 103 of the Rules of Procedure. In the application the Applicant asks for return of a deposit paid for a property which the Applicant states was returned to the letting agent. The application appears to have been made against the letting agent and does not specify that the deposit had not been lodged. The Applicant submitted correspondence between herself and the letting agent which disclosed as the end date of the tenancy 8 April 2022 and included various invoices issued with regard to the tenancy. The application was not accompanied by a tenancy agreement.
2. On 8 July 2022 the FTT wrote to the Applicant requesting further information,

advising the applicant of the time limit of applications under rule 103 and requesting a copy of the tenancy agreement and proof of payment of the deposit.

3. On 12 July 2022 the Applicant replied: *“The situation is one whereby a deposit was put in by the letting agent but wrongful claims have been used to keep it.”* No tenancy agreement was included.
4. The landlord register shows that the landlord for the property is a named individual and that the Respondent named by the Applicant is the landlord’s letting agent.
5. 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 ( **[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

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 Applicant stated clearly that the deposit was lodged and returned to the letting agent. The Application is made under Rule 103 of the Procedural Rules and Regulation 9

of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Both provisions clearly state that such an application only relates to non – compliance of a landlord with the requirement to lodge a deposit as set out in regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011, must be made against the landlord and must be made no later than 3 months after the tenancy ended.

2. The Applicant wishes to have the funds she paid returned to her. Rule 103 is not a process which can create that outcome. It is a process which may result in a payment order for non - compliance of a Respondent with the obligations arising from the Tenancy Deposit Schemes (Scotland) Regulations 2011. The Applicant does not claim that the tenancy deposit was not lodged in accordance with the said Regulations.
3. The public landlord register and the correspondence lodged with the application show that the application is not directed at the landlord but at the letting agent. This is not competent.
4. The end of the tenancy is stated as 8 April 2022. In terms of Rule 5 of the Rules of Procedure and application is held to be made on the day the last outstanding documents necessary to meet the lodging requirements are provided. The tenancy agreement has not been provided. It is now too late to do so within the time limit set out in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
5. It would not be appropriate to accept an application under rule 103 which is directed at a letting agent, does not claim that the deposit was not lodged in accordance with the Regulations and does not meet the lodging requirement stated in rule 103 (b) of the Rules of Procedure. The application under rule 103 thus has to be 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.**

Petra Hennig McFatridge

Legal Member

14 July 2022