



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

Broomwell, 35 Hillhead Road, Monikie ("the Property")

Case Reference: FTS/HPC/PR/23/1045

Emma Kidd, The Old School, Memus ("the Applicant")

Margaret Fyvie, Affleck House, Monikie ("the Respondent")

1. The Applicant lodged an application on 30 March 2023, seeking an order in terms of Rule 103 of the Procedure Rules and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The application was lodged with several documents, including a tenancy agreement. The Applicant did not provide any information or evidence regarding the date that the tenancy ended. In response to a request for further information, the Applicant stated that the tenancy had ended on 1 December 2022. Although they had stored some property in the garage for a period after this date, they did not have access to the house and were not charged for storage.

DECISION

2. The Legal Member considered the application in terms of Rule 8 of the Chamber 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.

- 3. After consideration of the application and documents lodged in support of same the Legal Member considers there is good reason to believe that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Rules.**

Reasons for Decision

4. Regulation 3 of the 2011 Regulations states - “(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working

days of the beginning of the tenancy – (a) pay the deposit to the scheme administrator of an approved scheme.” Regulation 9 of the 2011 Regulations states – “(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**”

5. Rule 5(1) of the Rules states that 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 the...” relevant rule. Rule 103 states that an application must be accompanied by “evidence of the date of the end of the tenancy, (if available)”.
6. The application was lodged on 30 March 2023. Even if the mandatory requirements for lodgement had been met on this date, the application had not been submitted within the three month time limit. The Tribunal has no discretion to extend the time limit. The Legal Member is therefore satisfied that it would not be appropriate to accept the application. It is rejected on that basis.

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.

J Bonnar

Josephine Bonnar
Legal Member
5 June 2023