

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

51 Jesmond Road, Aberdeen ("the Property")

Case Reference: FTS/HPC/PR/20/2198

Fiona Smith, 145 Craigievar Crescent, Aberdeen ("the Applicant")

**Aberdeen Property Leasing, 138 Rosemount Place, Aberdeen ("the
Respondent")**

1. By application received on 19 October 2020, the Applicant seeks 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 Applicant stated that she was seeking an order against the letting agents of the property for failure to lodge her deposit in an approved scheme.
2. On 28 October 2020, the Tribunal issued a request for further information. The Applicant was advised that applications under the 2011 Regulations could only be taken against a landlord, and not a letting agent. She was asked if she wished to amend the application. She was also asked for further information and documentation including a copy of the tenancy agreement and the date on which the tenancy came to an end. The Applicant provided a prompt response but only confirmed that her complaint was in relation to the letting agent and not the landlord. She did not provide any of the additional information or documentation requested by the Tribunal. On 11 November and 8 December

2020, further letters were issued to the Applicant directing her to provide a response to the request for further information. No response has been received.

DECISION

3. 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.”

4. **After consideration of the application and documents lodged in support of same the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a)**

of the Rules.

Reasons for Decision

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. Rule 103 of the Procedure Rules states that an application has to be accompanied by a copy of the tenancy agreement or if this is not available, "as much information about the tenancy as the tenant or former tenant can provide". In addition, the application must be accompanied by evidence of the date that the tenancy ended. The Applicant has failed to provide a copy of her tenancy agreement, any information about the tenancy and any information or evidence about the end of the tenancy. The Tribunal has written to the Applicant on three occasions directing her to provide this information, but she has failed to do so.
7. 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." Regulation 10 states that if the Tribunal is satisfied that a landlord did not comply with any duty in regulation 3 the Tribunal "(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit". An application under the 2011 Regulations is only competent if it is made against a landlord as the obligations are imposed on landlords, and not their agents. As the application specifies the letting agent, and as the Applicant has not asked to amend the application, the application is incompetent.
8. As the Applicant has failed to comply with the requirements of Rule 103 of the Procedure Rules and as the application submitted is incompetent, the Legal Member determines that the application is frivolous, misconceived and has no

prospect of success. The application 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.

Josephine Bonnar
Legal Member
8 January 2021