



**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

Case reference: FTS/HPC/PR/22/1592

22 Rubislaw View, Aberdeen, AB15 4DD (the property)

Parties

Mr Andrew Knowles (Applicant)

Aberdeen Property Leasing (Respondent)

1. On 25 May 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 Aberdeen Property Leasing. The Applicant provided a copy of the tenancy agreement, correspondence from SafeDeposits Scotland and a deposit invoice.
2. On 7 June 2022 the FTT wrote to the Applicant: “You have named the letting agent as the respondent. The obligation to lodge the deposit is the landlord’s. Please confirm if you wish to amend the application to have the landlord as respondent. Please provide details of the name

and current address of the landlord. • Please confirm when the tenancy came to an end and provide evidence of this. • Please note that in terms of regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations an application must be made within 3 months of the tenancy coming to an end. Your application will not be 'made' until you have dealt with all outstanding inquiries of the tribunal and it has been accepted by the in house convenor. Please bear the time limit in mind when dealing with correspondent of the tribunal. We will not necessarily send reminders."

3. On 7 June 2022 the Applicant replied: "Hi, In response to your email please find attached proof of tenancy duration. Also I do not have the name and address of the landlord APL were dealing with the leasing of property on behalf of their client and I wasn't privileged to this information unfortunately. If you require anything else please don't hesitate in contacting me." The Applicant provided a checkout report dated 29 April 2022 on behalf of Aberdeen Property Leasing.
4. On 10 June 2022 and on 30 June 2022 the FTT wrote again to the Applicant advising that the application is not competent against the Letting Agent and that any amendment must be made within the 3 months period after the end of the tenancy. The Applicant was asked to provide this information by 14 July 2022.
5. There was no reply to these requests for further information.
6. 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 the Letting Agent. 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 Applicant was given several opportunities to consider the matter. The Applicant has not replied to the FTT's requests for further information of 10 and 30 June 2022 despite the FTT having advised clearly of the possibility that the application may be rejected in those circumstances. As at 29 July 2022, which is the date 3 months after the tenancy end date intimated by the Applicant, the application is still directed against the Letting Agent and not against the landlord stated in clause 3 of the tenancy agreement. The application is thus not competently made.
3. 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

29 July 2022