



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mrs Barbara Graham in terms of rule 103 of the Rules.

Case reference FTS/HPC/PR/23/0995

At Glasgow on the 24 April 2023, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules

1. This is an application by Mrs Barbara Graham in terms of Rule 103 of the rules. The application was ostensibly to recover a portion of a tenancy deposit.
2. The inhouse convenor reviewed the application and the Tribunal wrote to the Applicant on 4 April 2023 seeking further information as follows:
 - (1). The application appears to have been submitted using the wrong application form and Rule. If you are seeking repayment of the deposit the application should be made on Form F and in terms of Rule 111 (civil proceedings). Please submit a replacement form which refers to the correct Rule. Please also note that the Tribunal does not have jurisdiction if the repayment of the deposit has already been determined by a Tenancy deposit Scheme.
 - (2). If you are also seeking a penalty for a failure by the Landlord to register the deposit in a scheme in terms of Rule 103, please note that these application must be lodged no later than 3 months after the tenancy has ended. An application under this Rule is therefore time barred.

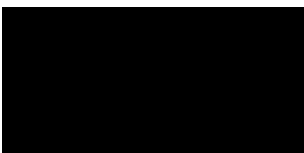
3. No response was received.
4. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if ***“they consider that an application is vexatious or frivolous”***.
5. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall) Magistrates Court (1998) Env.L.R.9. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic”.
6. I consider that this application is misconceived as it has been made under the wrong rule. It appears to relate to the return of a tenancy deposit at the end of a tenancy, rather than the failure of a landlord to lodge the deposit. Rule 103 is not appropriate. Even if Rule 111 was used, it appears the deposit scheme have adjudicated and the deposit has been divided between the Applicant and the landlord. The Tribunal therefore has no jurisdiction and the application has no reasonable prospect of success.
7. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as the Applicant has failed to cooperate with the tribunal in the execution of its duties.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Legal Member