



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

47 Esslemont Drive, Inverurie, AB51 3UO ("the property")

Case Reference: FTS/HPC/PR/20/0124

**Stephen Ledwith, 1918 Boul. Saint-Regis, Dorval, QC, H9P 1H6, Canada ("the
Applicant")**

Calvin Roddie, 35 Castleview Court, Kintore, AB51 0SF ("the Respondent")

1. By application received on 15 January 2020 the Applicant seeks an order in terms of Rule 69 of the Rules and Section 36(3) of the Housing (Scotland) Act 1988. Part of a tenancy agreement and copy bank records were lodged in support of the application. The Applicant also lodged applications in terms of Rule 103 and Rule 111. In each application the Applicant states that he had paid a tenancy deposit on 7 October 2019. The Respondent had failed to advise him that it had been lodged in a tenancy deposit scheme and had failed to lodge it in a scheme, using the funds to pay a mortgage installment. In addition the Respondent had unlawfully evicted the Applicant in December 2019, without obtaining consent or an eviction order, although rent up to the end of January 2020 had been paid. He had also removed the Applicant's property to a value of £9500 and demanded money for its return. In the application the Applicant states that he is seeking an order that the eviction carried out was unlawful, an order for repayment of rent and advance rent, and

an order for recovery of his property and compensation for the unlawful eviction.

2. On 21 January 2020 the Tribunal issued a letter to the Applicant in connection with all three applications. The Applicant was advised that the application had been lodged in terms of the wrong Rule, as it should be Rule 110 not Rule 69. He was also directed to amend the application form to restrict the information provided and orders sought to those relevant to an application in terms of this Rule. The Applicant was also directed to provide the information required by Rule 110 and a copy of the whole tenancy agreement. The Applicant was directed to respond by 4 February 2020. No response was received. The Tribunal issued further letters to the Applicant on 19 February and 18 March 2020, directing the Applicant to provide a response by 4 March and 25 March 2020 or the application may be rejected. No response has been received.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules. That Rule provides:-

“(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 lodgment 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 requirement manner for lodgment. “

- 4. After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5.**

Reasons for Decision

5. The Applicant submitted an application for damages for unlawful eviction in terms of Rule 69, although it should be for a wrongful termination order in terms of Rule 110 of the Procedural Rules. This Rule states that the application must “(b) be accompanied by evidence showing that the tenancy was unlawfully terminated.” The Applicant failed to submit evidence of wrongful termination. On three occasions the Tribunal wrote to the Applicant, directing the Applicant to provide this information and a copy of the tenancy agreement. The Tribunal also directed the Applicant to amend the application form submitted as it referred to the wrong rule, contained information which was not relevant to the application and included a request for orders which are not competent in an application under Rule 110. The Applicant has failed to respond and has not amended the application or provided the required document or information.
6. As the Applicant has failed to provide the information required in terms of Rule 110 of the Rules and has failed to submit a copy of the tenancy agreement and an amended form, having been directed to do so in a request for further information by the Tribunal in terms of Rule 5(3) of the Rules, the Legal Member determines that the application cannot be accepted. 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 July 2020