



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER
Q.C., LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017
Rules")**

in connection with

Ref: FTS/HPC/PR/21/1629

6 – 6 Huntingdon Place, Edinburgh, EH7 4AT ("the Property")

Ms Chaza Afandi, 85 – 5, Hopetoun Street, Edinburgh, EH7 4NJ ("the Applicant")

**Letting Protection Service Scotland (LPSS), The LPS Scotland, Leven House, 10
Lochside Place, Edinburgh Park, Edinburgh, EH12 9DF ("the Respondent")**

DECISION

**It was determined by the Legal Member acting under the delegated powers
of the Chamber President, in terms of 8 of the 2017 Rules that there was a
good reason to believe that it would not be appropriate to accept the
Application within the meaning of Rule 8(1)(c) of the Procedural Rules,
therefore the Application must be rejected in terms of Rule 8(1).**

REASONS

1. On 6 July 2021, an Application was received from the Applicant. The Application was made under Rule 4 of the 2017 Rules and stated as follows: *"I had to rais Action against LPSS Scotland. The LPSS made me pay for the same things twice. Plus make me pay for something broke by accident . But Edinburgh Sheriff Court rejected my claim because the law moved this kind of cases to Houses and Prperty Chamber, so I'm here now, and I hope I get justice. The LPSS problem is they didn't took my evidence into consideration and they ordered against me while Braemore failed to present evidence*

*because they were lying. I will explain more in an email, and I hope th ...
I want LPSS Scotland to pay me £283. They made pay for the s twice. They
discounted £161.50 for the eviction day. Despite I was already paid this to
the Landlord Solicitor which I presented the evidence. Also they discounted
£119.50 for something cistv£5~~4~~ and I break it accidentally.
My deposite was £950.00, unfairly discounted £283 so I got back £667.00.”
[sic]*

2. The tribunal’s administration informed the Applicant that the Application had been made under the wrong rule number.
3. On 8 July 2021, the Applicant sent an email in the following terms:
“Thank you for your email. And I'm sorry for accidentally sent a wrong rule number. This application form is against Letting Protection Service Scotland LPSS. I raised action against them at Edinburgh Sheriff court but then the last one told me I should do this kind of cases at House and property Chamber, which what I'm doing right now. In addition, I may say that The House and Property Chamber has got already some evidence that I sent already to support my claim” [sic].
4. On 8 July 2021, an amended application was received from the Applicant. The Application was made under Rule 103 of the 2017 Rules, being an application for an order for payment where a landlord has failed to carry out duties in relation to a tenancy deposit. The Application stated:

*“... LPSS made me pay for the same things twice. Plus make me pay for something broke by accident . But Edinburgh Sheriff Court rejected my claim because the law moved this kind of cases to Houses and Prperty Chamber, so I'm here now, and I hope I get justice. The LPSS problem is that they didn't take my evidence into consideration and they ordered against me while Braemore failed to present evidence because they were lying. I will explain more in an email, thank you. ...
I want LPSS Scotland to pay me £283. They made pay for the same thing twice. They discounted £161.50 for the eviction day. Despite I was already paid this to the Landlord Solicitor which I presented the evidence. Also they discounted £119.50 for something cost £50 and I break it accidentally.
My deposite was £950.00, and unfairly they discounted £283 so I got back £667.00” [sic].*
5. The Applicant attached documents, namely copy correspondence between her and LPSS; and her and a solicitor.
6. An application made in terms of Rule 103 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.*

7. The Applicant submitted an incomplete application and it was not accompanied by all of the required documents.
8. On 22 July 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

“Your amended application has been considered by a legal member acting with the delegated power of the Chamber President.

Your Application does not appear to be a competent application under Rule 103. Rule 103 relates to the landlord’s obligation to lodge a tenancy deposit. The details you have provided do not make any such allegation. Indeed, it appears that your deposit was protected with the tenancy deposit protection scheme, LPS Scotland and that following the end of the tenancy, a dispute arose which was referred to the ADR scheme operated by LPS Scotland. An adjudicator appears to have reached a final decision in relation to the dispute. The LPS scheme rules state that there are two opportunities for review within and there is no further review or appeal available. The scheme rules also state that parties cannot engage in ADR and also have a court action. It would appear that this matter has been finally determined by the adjudicator. There is no information about whether you made an application to review the decision if you were unhappy with it. That review should have been made to LPS Scotland and not to the Housing and Property Chamber.

Therefore, please confirm whether you wish to withdraw the application under Rule 103, otherwise it may be refused.

You may wish to consider whether to make a civil claim but the tenancy deposit protection scheme would not be the appropriate respondent as payment of funds has apparently been made to the landlord of the property following determination by the adjudicator at the conclusion of ADR. If you decide to

make a civil claim you would have to decide who you are making a civil claim against and provide a legal basis for doing so.

You have not provided a copy of the tenancy agreement. Please do so if you are making a civil claim. If it is a short assured tenancy, the claim would be under rule 70. If it was a Private Residential Tenancy, the claim will be made under Rule 111.

Any civil claim will also require to be properly specified, with a legal basis for the order which is sought.

Guidance on civil claims can be found on the Housing and Property Chamber website.

You may wish to seek legal advice from a solicitor or other housing advisor prior to making any civil claim.

Please reply to this office with the necessary information by 5 August 2021. If we do not hear from you within this time, the President may decide to reject the application.”

9. On 2 August 2021, the Applicant sent a response to the tribunal's administration in the following terms:

“Thank you for your email. I must say I have no idea of the Housing and Property Chamber (HPC) but Edinburgh court told me about it.

I agree with you that the HPC has created for cases that against the landlord or against the tenants only. But I've been told to do claim anyway.

I have showed HPC, how the ADR scheme operated by LPSS made me pay twice for the same thing when they have not even a single prove against my claim.

I also complained a lot to them but no one listened to me.

The case is a pure injustice and the truth is quite clear that I paid twice for the same disgusting thing in the first place.

The thing that I didn't mention to HPC is the Edinburgh Sheriff Court kicked me out of my house unfairly, the judge called judge Makie kicked me out without let me speak a word.

Why I was in that position?

Because first as you all might know that Edinburgh's solicitors are not keen to support foreigners against the local business and local people. So for 29 years I lived in Edinburgh, the local harming me and I do nothing because I can't have a solicitor even if I paid double and upfront. No solicitor is keen to support a forignor.

The local are not the local people, which is easier, the local are the local

government like NHS ruined my life from first year I got in touch and that was on the 1992. Then nearly every single local government like police, council, Court, ...etc ... they have harmed me, and I'm still standing strong despite I became severely disabled and very angry, and that what NHS did to me. However the local people harmed me a lot as well but I don't bother about that.

Back to our story, I suffered a lot from Braemore Estate agency, they gave me the property with a broken boiler for two months in the winter time I got no heat and no hot water (we were showering using cold water in those two month, despite two electric shower were available. Can you understand why we were using cold water instead of warm water? No you can't. I tell you, because my body and my son body were so freezing because there was no working boiler in the disgusting house and when we shower our freezing body only accepted the cold water otherwise the warm water cause burn in our body. Do you understand what kind of disgusting people am I dealing with here in Edinburgh?)

Also disgusting Braemore gave me the house full of disgusting mice (I will raise action to HPC soon regard the money I paid to make the disgusting house free from mice, took one year to clean the house from the mice and when become clean I went to the hospital on an emergency for an operation, I came from the operation to find out the disgusting Braemore entered my house behind my back and that make me mad, and was a main condition in the contract that no one entered the house behind my back. I suffer from OCD of hygiene and I was mad to discover they entered the house behind my back, they refuse responsibility, so to calm myself down I stopped paying rent and asked them to take me to the court believing the court will do justice, but the court cicked me out and didn't let me say a word.

Anyway, after that I paid all the areas. And moved to the hotels and I started a very awful life for 14 month. I borrowd money and pay to the hotels for 14 month, this is Edinburgh, the estate agencies won't give the good properties to forignor let alone forignor with Arthritis, and the council didn't help ... etc

I even offered to pay one year rent upfront and they didn't gave me a property until I found an agency they were a new one and they accept one year rent upfront.

I'm not going to withdraw my claim. I'm angry, how do you want me to do such a thing? I lost money and since Feb I'm wasting my time with the Edinburgh Sheriff Court and after with HPC.

If the HPC is going to reject my claim, I can't stop them. But I'm not cancelling my claim. LPSS made me pay twice for the same thing.

You suggested to raise civil action, but the Edinburgh Sheriff Court rejected anything to do with property and told me HPC is for properties.

By the way, my lease was a short assured tenancy, if you think they will give a foreigner a long assured tenancy please think again.

I did complain to the LPSS and showd them how I paid twice but they didn't bother. Even they admitted Braemore did not submit any proof.

The joke is this, LPSS and Edinburgh Sheriff Court thought Braemore is a

British Company, so they went against me. But for God sake do your homework first, Braemore is not a British Company it's owned by Chinese or an Arab person and that according to the Braemore staff who said that, so in this case we both foreigner at least I'm a resident of UK for 29 years while he was a new owner to Brarmore ... etc... so at least they should do justice in this case and forgot about the racism.

But I must say this, to calm my anger down I have nothing except "Fame and Shame". If I don't get my money back I will post her name full address, her email address and what she did to me on line.

Fairly to say this, the government has employed agencies to steal our deposit not to protect our deposit. If the deposit with the estate agency like olden days we go to the court, raise action and get our deposit back, but the government create those who can steal our deposit and we can do nothing, Good Job.

Look forward to hearing from you." [sic].

10. The Applicant did not withdraw her Application made in terms of Rule 103.
11. On 10 August 2021, the Application in terms of Rule 103 was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.
12. Rule 8 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."

13. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's responses, it was determined that the requirements for making an application under Rule 103 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 103. The Applicant has not provided the required information within the stipulated timescales. The Applicant has raised her application under Rule 103 against LPS Scotland, a deposit protection scheme, as a Respondent, whereas the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") place duties on landlords to protect tenancy deposits within stipulated timescales. On the basis of the available submissions made by the Applicant, it appears that the Applicant's deposit was protected in the deposit protection scheme administered by LPS Scotland and that there was a dispute about proposed deductions after the tenancy ended, which was determined by ADR arranged through the deposit protection scheme. The Applicant appears to be unhappy with the outcome of that ADR process as she appears to have been partially unsuccessful in obtaining her complete deposit back. In this Application, she seeks a payment of £283.00 from the Respondent (LPS Scotland) to her in respect of the partial deposit which was paid to the landlord. There are no allegations in the Application which would amount to a claim in terms of Rule 103 of the 2017 Rules and the 2011 Regulations against the Respondent. For those reasons, it was determined that there was a good reason to believe that it would not be appropriate to accept the Application within the meaning of Rule 8(1)(c) of the Procedural Rules; therefore the Application must be rejected in terms of Rule 8(1).

14. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

10 August 2021