



**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/22/2239

**Parties**

**Mr Andrew McCaig (Applicant)**

**c/o D.J. Alexander Estate Agents (Respondent)**

**2/L 23 Esmond Street, Yorkhill, Glasgow, G3 8SN (House)**

1. The application was submitted to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 by the Applicant on 6 July 2022. The application parts 7 a) and c) were not completed, the Respondent was described as c/o D.J. Alexander and in part 6 the information provided related to the Letting Agent. The end date of the tenancy information provided

was an email stating that the lease will expire on 6 March 2022.

2. On 11 July 2022 the FTT wrote to the Applicant requesting among other information the following:

“Before a decision can be made, we need you to provide us with the following: 1. It would appear that the tenancy ended over three months ago on 6th March 2022. Rule 103 applications must be made within three months of the end date of the tenancy. If it is the case that the tenancy ended over three months ago, please confirm that you wish to withdraw the application. 2. In the event that the tenancy did not end more than three months ago, please remove the estate agent from the Respondent company box on the application form, and provide a proper address for the landlord, which cannot be a care of address. 3. Please be aware that we must receive all the necessary information and a completed application form within three months of the end date of the tenancy. “

3. The reply date given on the letter from the FTT was 25 July 2022. No reply has been received.
4. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

## DECISION

5. 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."*

6. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

## **REASONS FOR DECISION**

7. Relevant provisions:

***Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011***

***9 (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 of that tenancy deposit.***

***(2) an application under paragraph (1) must be made no later than 3 months after the tenancy has ended.***

Reasons:

8. It would not be appropriate for the Tribunal to accept an application after the expiry of the period during which such an application can be made. The legislation is clear, in terms of regulation 9 as set out above, an application under regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made no later than 3 months after the tenancy has ended.
9. The tenancy ended on 6 March 2022. The date 3 months after that end date is 6 June 2022. The application was only sent to the FTT by email on 6 July 2022 and thus made on that day.

10. There is no provision that would give the FTT the authority to extend the statutory time limit set out in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
11. Furthermore, the application as it was made did not state the rule number and provided the Letting Agent rather than the landlord details in part 6 and appeared to be directed against the wrong respondent as it was directed against c/o D J Alexander rather than the landlord. Whilst these matters could have been remedied had there be time for an amendment of the application, they could in this case not be addressed as the application itself was made after the expiry of the statutory period for making this type of application to begin with and thus could not be accepted. The FTT cannot deal with an application that has been made after the statutory period for lodging that type of application has expired.
12. The application is thus rejected because it was made later than 3 months after the tenancy had ended.

### **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 McFatrige

Legal Member

27 July 2022