



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/PR/20/1485**

**Re: 26 Invercargill, East Kilbride, G75 8RE ("the Property")**

### **Parties**

**Miss Laura Gordon (Applicant)  
Mr Martin Fellowes (Respondent)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

### **Background**

1. The application dated 24 June 2020 was received by the Tribunal under Rule 103 on 8 July 2020. The application was in respect of an alleged failure of the Landlord to protect a tenancy deposit under the **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)**.

2. The application was considered by the Tribunal on 26 August 2020. The Applicant was asked to provide further information as follows:

*"Before a decision can be made, we need you to provide us with the following:*

- 1. Please confirm the end date of the tenancy.*
- 2. It appears from your supporting documentation that you vacated the Property on 6 April 2020. Your application is dated 24 June 2020 but was not received by the Tribunal until 8 July 2020. An application under Rule 103 must be submitted no later than 3 months after the termination of the tenancy. Please provide your written*

comments as to why you consider the application has been submitted on time or alternatively advise if you wish to withdraw the application.

Please reply to this office with the necessary information by 9 September 2020. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant responded by email of 1 September 2020 in the following terms:

*“Please find attached last day of tenancy. The last official date was Thursday 2nd of April. Angel let’s allowed me to hand keys back on Monday 6th of April due to the difficulty of moving during the pandemic. Sorry to hear that you did not receive the application until the 8th of July. I am familiar with rule 103, please be assured that the application was posted in time for you to receive it within the prescribed time scale. To my knowledge all mail was considerably delayed as a result of the COVID 19 pandemic. I can only assume this to be the reason for the delay.”*

4. The **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)** clearly provide in terms of Regulation 9.2 that an application *“must be made no later than 3 months after the tenancy has ended.”* The Tribunal has no discretion to extend the time limit or allow an application late. If an application is received after the expiry of the 3 month time limit in Regulation 9.2 then that is an end of the matter notwithstanding any explanation that may be advanced by an Applicant.

### **Reasons for Decision**

5. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;-*  
*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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. '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”.*

7. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Regulation 9.2 provides that such applications should be made no later

than 3 months after the tenancy has ended. The Applicant has submitted her application more than 3 months after the tenancy has terminated. The application is out of time and the Tribunal cannot grant the order sought.

8. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

# A Strain

**4 September 2020**

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**Legal Member/Chair**

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**Date**