

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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 Rules")

in connection with

12B West Kirk Street, Airdrie, ML6 0BW

Case Reference: FTS/HPC/PR/18/0731

MS DEBBIE MCLEAN ("the applicant")

MR KENNETH STENHOUSE t/a LOCATION ("the respondent")

1. On 27th March 2018, an application was received from the applicant. The application was made under Rule 103 of the Chamber Procedural Rules being an application for an order for payment where a landlord has not paid the deposit into an approved scheme. The following documents were enclosed with the application:-
 - (a) Copy Short Assured Tenancy Agreement;
 - (b) Copy e-mail correspondence confirming that the tenancy deposit has not been paid into any of the approved schemes.

DECISION

2. I 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;*
- (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."

3. After consideration of the application, the attachments and correspondence from the applicant's representative, I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

4. '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*". It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

5. The respondent in this application is the landlord's letting agent. The landlord (Derick Ivimy) is specified in the application as the applicant's representative. I understand from the correspondence relating to the application that the landlord is aggrieved with his letting agent (the respondent) in relation to various matters, including its failure to lodge the tenancy deposit in an approved scheme.

6. This application is brought under Rule 103 of the Chamber Procedural Rules and Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* ("the 2011 Regulations"). Regulation 9(1) of the 2011 Regulations provides that "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 in respect of that tenancy deposit". Regulation 3 of the 2011 Regulations concerns the obligation placed on a landlord to pay the tenancy deposit into an approved scheme within 30 working days of the commencement of the tenancy. Regulation 10 of the 2011 Regulations provides that "If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to (i) pay the tenancy deposit to an approved

scheme; or (ii) provide the tenant with the information required under regulation 42".

7. Accordingly, it may be seen that the provisions of the 2011 Regulations concern a tenant applying to the Tribunal for an order under Regulation 10 where the landlord has not complied with Regulation 3. In that event, the Tribunal must make an order against the landlord in respect of any such breach. The respondent in this application is not the landlord, but is the landlord's letting agent. The Tribunal has no power to make any order against a party who is not the landlord in these circumstances in terms of the 2011 Regulations, and accordingly this application has no prospect of success and must be rejected upon the basis that it is frivolous.

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.

N Kinnear

Neil Kinnear
Legal Member
3rd April 2018