



**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/23/1333

Parties

Ms Summer Austin (Applicant)
Safe Letting (Respondent)

84 Kelvin Dr, Ground Floor, Glasgow, G20 8QN (House)

1. On 24.4.23 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application from the Applicant. The application was made under Rule 103 of the Rules of Procedure. The application was directed against the Letting Agent Safe Letting. The Applicant provided a copy of a Private Residential Tenancy (PRT) showing the landlord as Soraya Khan, emails from the Applicant to Safe Lettings showing that the Applicant gave 30 days notice for her tenancy on 30.10.22 and reminded the Letting Agents about the return of the deposit on 21.11.22, and illegible copies of messages.
2. The Application details that the Applicant is seeking repayment of the deposit an amount of 3x the deposit as penalty for the deposit not having been lodged.
3. On 26.4.23 the FTT wrote to the Applicant asking for legible copies of the screenshots of the message exchange to be submitted. The Applicant provided further copies in

an email of 28.4.23 but again the screenshots of the messages were illegible.

4. On 2.5.23 the FTT wrote to the Applicant in the following terms: "Before a decision can be made, we need you to provide us with the following: 1. The application must be made against the landlord and not the letting agent. The Regulations do not apply to letting agents who only act on behalf of the landlord. Please provide an amended application form to the correct Respondent. This appears to be Soraya Khan and her address, according to landlord registration, is 1 Winton Drive, Glasgow. However, it is the Applicant's responsibility to provide the current address. 2. Please confirm your current address. You have stated that it is the property address but also provided evidence that the tenancy was terminated by notice given in October 2022. 3. If you are seeking repayment as well as an order under the Regulations you must submit an application under Rule 111 using Form F. This must also be against the landlord. However, you can only seek repayment if the tenancy has ended. 4. If the tenancy ended in November 2022, the application under Rule 103 will be time barred as it must be made within 3 months of the end of the tenancy. Please clarify the position. 5. Please provide a further copy of the screenshots lodge with the application, as they are illegible. Please reply to this office with the necessary information by 16 May 2023"
5. By 24.5.23 no further reply had been received.
6. All documents are referred to for their terms and held to be incorporated herein.

B DECISION

1. 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."

- 2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Rule 103. Where a tenant or former tenant makes an application under regulation 9 (**[F65**First-tier Tribunal orders**]**) of the 2011 Regulations, the application 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.

Requirements for making an application

5.—(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 lodgement 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 required manner for lodgement.

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

(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 in respect of that tenancy deposit.

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

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (a) (iii) of the Procedural Rules states that such an application must state the name, address and registration number (if any) of the landlord. An application of this nature can only be directed against a landlord and thus the application has to state the name and address of the landlord. It was made clear in the application that the name and address provided were those of the Letting Agent and not of the landlord. The Applicant has not directed the application against the landlord.
2. The Applicant states that the tenancy ended by her giving 30 days notice on 17.10.22. The notice period expired in November 2022.

3. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(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 in respect of that tenancy deposit. (2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.” Regulation 10 then states: “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...” In terms of Rule 5 (3) of the Procedural Rules “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 required manner for lodgement.”
4. The application was not made until 24.4.23. Thus the period of 3 months within which the application can be lodged had already expired on the date when the application was made to the FTT.
5. When it was lodged the application was clearly not competent as it was directed against the letting agent and not the landlord. By the time the 3 months period for lodging a competent application ended the application was directed against the wrong Respondent. Thus a valid application under the legislation could no longer be made.
6. The reason for the FTT to give the Applicant an opportunity to clarify matters arose from the Applicant having given as her own address the address of the property to which the application related, although she had stated that the tenancy had ended. Whilst this may have contradicted the information that the tenancy ended, I have considered the clear statement of the Applicant that the tenancy was terminated by her giving notice to the Letting Agent on 17.10.22 and the fact that she clearly then followed that up with an email on 21.11.22 stating the 30 day period had expired and she still did not have her deposit back. I conclude from these communications that the Applicant had terminated the lease in accordance with section 48 of the Private Housing (Tenancies) (Scotland) Act 2016 but that she had not provided her own address as required by rule 103 (a) (i), which was again a matter raised by the FTT in the request for further information on 2.5.23, to which no reply was received.

7. It would not be appropriate for the Tribunal to accept an application which is made out with the 3 months time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
8. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: “ [1] *The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and subordinate legislation in the form of regulations made by the Scottish Ministers.* In UT60 [2019] Sheriff Di Emidio states at paragraph 14: “*It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT’s decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant.*”
9. The original application was made after the expiry of the 3 months period and was incomplete as it did not provide the details of the landlord or the address of the Applicant. It was directed against the wrong Respondent. The Applicant had been given the relevant information by the FTT and had been given the opportunity to provide further information but did not reply.
10. The application, which in terms of Rule 5 (3) is considered to be made when the application documents are finally complete, has to be rejected as having not been competently made within the the period stated in Regulation 9 expired. It is now no longer possible to make a valid application in terms of rule 103 as the time limit has expired.

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 McFatridge
Legal Member
24 May 2023