



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

26/4 Rannoch Road, Edinburgh ("the Property")

Case Reference: FTS/HPC/PR/21/0399

Emese Hegedus, 13/1 Smithfield Street, Edinburgh ("the Applicant")

Josephine Munthali, 26/4 Rannoch Road, Edinburgh ("the Respondent")

1. By application received on 22 February 2021, the Applicant seeks an order in terms of Rule 103 of the Procedure Rules and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). In the application the Applicant states that she vacated the property on 17 May 2020.
2. On 9 March 2021, the Tribunal issued a request for further information. The Applicant was advised that an application under the 2011 Regulations had to be made to the Tribunal no later than three months after a tenancy has ended. She was asked to clarify when the tenancy came to an end and also asked for information about the nature of the tenancy, as she had made reference to a resident landlord. The Applicant replied on 9 March 2021 and confirmed that the landlord had not been resident. However, she did not provide any further information regarding the end of the tenancy.

DECISION

3. The Legal Member 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.”

4. **After consideration of the application and documents lodged in support of same the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.**

Reasons for Decision

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. Regulation 3 of the 2011 Regulations states - "(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy – (a) pay the deposit to the scheme administrator of an approved scheme." Regulation 9 of the 2011 Regulations states – "(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"**
7. The application was lodged on 22 February 2021. It states that the Applicant vacated the property on 17 May 2020, some nine months before the lodging of the application. The Applicant has been asked to clarify the position regarding the end date of the tenancy and has failed to do so. As the application does not appear to have been submitted within the time limit stipulated in the regulations, the Tribunal cannot entertain it. The Legal Member therefore determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.



Josephine Bonnar
Legal Member
31 March 2021