



Decision with Statement of Reasons of H Forbes, 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/23/0712

Re: 13B Gillies Street, Troon, KA10 6QH ("the Property")

Parties:

Nadia Denovan ("the Applicant")

Susie Kitson ("the Respondent")

Tribunal Member:

Ms H Forbes (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 would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 103 on 6th March 2023, with accompanying documents.
2. The application was considered by a legal member of the Tribunal and by letter dated 10th March 2023, the Applicant was informed that further information was required as follows:
 1. You state at part 7(c) of the application form that you are seeking return of the deposit. A Rule 103 application can only deal with an award in respect of an unprotected tenancy deposit. If you wish to seek an award in this regard, and continue with the Rule 103 application, please provide the following:
 - (i) An amended page of the application form to show the order you are seeking, and to remove reference to return of the tenancy deposit.

(ii) Evidence from the three approved tenancy deposit schemes to show that the deposit was not lodged. This should be available by emailing the schemes.

(iii) Evidence of payment of the deposit, if this evidence is available.

(iv) Evidence of the actual end date of the tenancy. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, regardless of any reply date stated on correspondence, otherwise the application will have to be rejected. It may well be the case that you have already missed the 3 months deadline, in which case the Tribunal will have to reject the application.

(v) Provide the full address for the Applicant – no town/city is mentioned in the application

(vi) Provide the full address for the Respondent.

(vii) Please clarify why you have put the same details for the Applicant as for the Applicant's Representative.

(viii) Provide a copy of the tenancy agreement or, if this is not available, please state the landlord details, details of the property, start date, rent, deposit amount and what information was provided regarding the deposit arrangements.

2. If you are also seeking return of the deposit, you must make a separate application for payment of this under the appropriate rule, which depends on the type of tenancy. Please see our website for details. There is no 3 month time limit for such an application, but if you do intend to make such an application, you may wish to do so promptly in the hope that it can be dealt with at the same time as this application.

Please reply to this office with the necessary information by 24 March 2023. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

3. The application was considered by a legal member of the Tribunal and a further opportunity was afforded to the Applicant to provide the requested information by email dated 3rd April 2023. No response was received.
4. The application was considered by a legal member of the Tribunal on 19th April 2023.

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. The Tribunal has requested further information from the Applicant in order to consider whether or not the application must be rejected. The Applicant has failed to respond in full to the Tribunal's request for clarification and further information and documents.
7. In particular, the application appears to have been made under the incorrect rule, and the Applicant has not included the requisite evidence to support the application. The type of tenancy is unknown, as no copy tenancy agreement was provided, and no details of the date of commencement of the tenancy was provided, therefore, it is not clear whether this should be a rule 70 or rule 111 application. Furthermore, the Applicant has not provided an address for the Respondent which is required to allow the papers to be served, or an application for service by advertisement along with evidence the Respondent cannot be traced.
8. The Applicant's failure to respond to the Tribunal's request suggests it would not be appropriate to accept the application.
9. 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.

H Forbes

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Legal Member/Chair

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19th April 2023
Date