



**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

3 Minard Place, Dunoon, PA23 7AH ("the property")

Case Reference: FTS/HPC/PR/21/2986

Parties

Mrs Efrat Dgany (Applicant)

Mr Martin Bentley (Respondent)

Dunoon Property (Respondent's Representative)

1. The application dated 22.11.2021 was submitted to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 by the applicant on 1.12.2021. The application was sent together with a copy of a tenancy agreement and a text message dated "7 Jan" giving notice to the landlord. The Applicant also lodged various bank account printouts showing a deposit payment and rental payments, which appeared to end with the payment on

6.1.2020.

2. On 7.12.2021 the FTT wrote to the applicant as follows:

“Please confirm the end date of tenancy to the tribunal to allow the Tribunal to establish whether the application has been made in time. Please note that applications under rule 103 have to be made within 3 months of the end of the tenancy (Regulation 10 The Tenancy Deposit Schemes (Scotland) Regulations 2011). Although this request for further information allows 14 days to respond, please bear in mind the overall 3 month timescale from the end date of the tenancy and that an application is not held to be made until the application and all required supporting information and evidence are provided. It appears from the related case CV/21/2984 that the tenancy ended in February 2020 and thus that the application under Rule 103 is made out with the time period allowed for such application. Should this not be the case please advise of the end date of the tenancy relating to application PR/21/2986. If the tenancy did indeed end in February 2020 please withdraw this application as it was lodged out with the time limit. Otherwise it would have to be rejected due to being lodged out of time. Please reply to this office with the necessary information by 21 December 2021”

3. On 13.12. 2021 the Appellant replied:

“Thank you for your recent correspondence. I read with disappointment the fact that Rule 103 can only be applied for a 3 month period after the tenancy has ended, which I can confirm was in February 2020. Unfortunately, at that time I was not in a position to lodge an application as I was in contact with the estate agent who had made several promises of payment (as you can see from the correspondence, which I have submitted along with the application forms). Then unfortunately we got stranded in Israel for many, many months due to Covid and I was unable to obtain the paperwork which was required for the submission. Surely I can apply for an exception to the 3 month rule ? I have continuously contacted them with requests to return my deposit since February 2020. This caused delays as they would promise to repay and then I would allow the time they requested until I contacted them again. It is upsetting and frustrating that he has dragged this out for a long time and now I have lost the right to support in pursuing the return of my deposit which was not logged and not kept in a secure account, as required by law. As per your letter regarding my CV/21/2984, that application appears to be accepted. Can you advise if this application would recover my funds should the case be decided in my favour ? Is there any other assistance or application available to me to recover my deposit of £450? Thank you for your time I will look forward to hearing from you.”

4. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

DECISION

5. 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."

6. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

7. Relevant provisions:

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

9 (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 of that tenancy deposit.

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

Reasons:

8. It would not be appropriate for the Tribunal to accept an application after the expiry of the period during which such an application can be made. The legislation is clear, in terms of regulation 9 as set out above, an application under regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made no later than 3 months after the tenancy has ended.
9. Whilst the applicant has provided reasons why the application was not made sooner, this does not affect the expiry of the deadline for an application of that nature. There is no provision that would give the FTT the authority to extend that time limit. The application is made out with the 3 months period as it was lodged on 1.12 2021 and almost 21 months after the tenancy had ended on in February 2020.
10. The Applicant has lodged an application to recover the deposit of £450, which has been accepted as it is not time barred. However, the application in terms of Rule 103 is made out with the time period stated in regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and it would not be appropriate to accept an application that has been clearly made out of time. The application is thus rejected.

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
15 December 2021