



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Miss Heather Davidson in terms of rule 103 of the Rules.

Case reference FTS/HPC/PR/22/1188

At Glasgow on the 26 July 2022, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules.

1. This is an application by Miss Heather Davidson for a penalty in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (‘the regulations’).
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 6 May 2022 seeking further information as follows:

(1). The application appears to be made against the letting agent and not the landlord. Please confirm if you wish to amend the application and provide a name and address for the landlord. This should be on your tenancy agreement or can be provided by the letting agent or landlord registration, if the property is registered. Please note that the regulations apply to landlords and not letting agents. If you cannot obtain an address you must apply for service by advertisement using the form on the Tribunal website. This should be submitted with evidence of attempts to obtain an address, such as a trace report from a tracing agent or Sheriff Officer.

(2). Please provide a full copy of the tenancy agreement, if available.

(3). Please confirm if the tenancy is continuing or has ended. If it has ended you must provide the date on which it ended with evidence of this, if available.

(4). Please advise if the joint tenant wishes to be added as joint applicant and provide contact details. If not please provide written authority from him for the application to proceed in your sole name. Please

note that an application under Rule 103 with all required information and documents must be lodged no later than 3 months after the tenancy has ended.

3. The applicant did not respond and a reminder was sent by the tribunal on 6 June 2022. A further reminder was sent on 30 June 2022 reiterating the three month time bar.
4. No reply was received.
5. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if ***“they consider that an application is vexatious or frivolous”***.
6. “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”.
7. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as the essential information required for it to proceed has not been provided, despite a detailed request being sent by the tribunal and two reminders. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is incomplete and the applicant has failed to cooperate with the tribunal in the execution of its duties.
8. It is open for Miss Davidson to resubmit the application with the correct supporting documentation, bearing in mind that in terms of regulation 9 of the regulations, an application must be made no later than three months after the tenancy has ended.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward,

Lesley Anne Ward

Legal Member