



**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 Mr Graham Wilson in terms of rule 103 of the Rules.

**Case reference FTS/HPC/PR/22/1628**

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 dated 8 May 2022 by Mr Graham Wilson 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 9 June 2022 seeking further information as follows:
  - *Please confirm the correct address for the property as the address provided in the application form and notice to leave is different to that in the tenancy agreement.*
  - *Please confirm that you are still resident in the property. If the tenancy has ended, you should be aware that a rule 103 application must be made within 3 months of the end date of the tenancy.*
  - *There is a joint tenant named in the tenancy agreement. Please confirm if they are to be added as an applicant, and amend the application form accordingly.*
  - *There is a joint landlord on the tenancy agreement. Please confirm if they are to be added as a respondent, and amend the application form accordingly.*
  - *If the tenancy has not yet ended, you cannot seek return of your deposit. In any event, this cannot be done through a rule 103 application which only relates to breaches of the tenancy deposit regulations. The correct forum for discussion regarding return of the deposit is the tenancy deposit scheme. Please amend the application form at section 7 to remove any information that does not relate to breaches of*

*the tenancy deposit regulations. Supported by the Scottish Courts and Tribunals Service  
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- *The Tribunal cannot look into the reasons why you were asked to leave as this is not relevant to a rule 103 application. Please amend the application form at section 7 to remove reference to this matter.*
- *Please provide any available evidence from the tenancy deposit scheme showing the date of lodging of the tenancy deposit. If this is not available, please explain how you have become aware that the deposit was lodged. You may also wish to provide evidence of payment of the deposit, if this is available.*
- *Please reply to this office with the necessary information by 23 June 2022. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.*

3. The applicant did not respond and a reminder was sent by the tribunal on 5 July 2022 narrating the terms of the original letter in full.
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 a detailed reminder. 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 Mr Wilson 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

Legal Member