



**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

Case reference FTS/HPC/PR/21/1710

Parties

Miss Julie Richmond (Applicant)

Mr Kushal Duggal (Respondent)

9 Nursery Ave, Prestwick, KA9 2DE (House)

A BACKGROUND

1. On 15 July 2021 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under rule 103 of the Procedural Rules regarding the property. The application gave no information as to when the tenancy ended but the address provided for the applicant was not the same

as the address of the property in the tenancy agreement lodged with the application. No end date was specified in the application. The application in part 7 b specified that the applicant was asking for her deposit back.

2. On 2 August 2021 the FTT wrote to the applicant: *“1. Your Application is made in terms of Rule 103, which is an Application alleging that the landlord has failed in his duties to lodge the tenancy deposit and to provide the required information. The maximum penalty for a breach of the duty is three times the amount of the tenancy deposit. However, in Section 7(c) you have requested return of your deposit money. A claim for return of deposit money is a different sort of application and would require to be made on a second application form alongside the Rule 103 claim (see below at 2).*

a. Please submit an amended Application form for your Rule 103 claim, with Sections 7(b) and 7(c) fully completed. 7(b) should contain details of the claim and 7(c) should contain details of the amount sought up to a maximum of three times the deposit.

Please provide proof of the date upon which the tenancy ended. An application under Rule 103 must be made no later than 3 months after the tenancy ended.

If you also wish to make a claim for return of your deposit, then you can submit a separate Application in terms of 111,. If you do make an application in terms of Rule 111, please provide supporting documents in support of the sum claimed eg another copy of your tenancy agreement. Your second application will then be considered by the President or a Legal Member but if both applications are accepted they can be heard together at a case management discussion.

Please clarify the address of the property in your amended application as you appear to have stated the landlord’s address and not the Property address in section 5.”

3. No reply was received by the expiry of the period set for the further information.
4. On 1 September 2021 the FTT sent a further letter asking the applicant for the above information. She replied on 16 September 2021 but still did not provide the date of the end of the tenancy and still did not provide clarification of the property address. The letter did, however, contain the following sentence: *“When I left Mr K Dougall property on (left blank) I contacted the Safe Deposit Scheme...”*. She repeated she wants the tenancy deposit returned but did not amend the application or lodge an application under rule 111.

5. On 7 October 2021 the FTT again wrote to the applicant as follows: *“In your letter you state that you are only seeking recovery of the deposit that you paid. If this is the case you have used the wrong application form and the wrong Tribunal Rule. You must complete Form F which can be found on the Tribunal website and submit it in terms of Rule 111. A further copy of your tenancy agreement should also be submitted. Please note that the Tribunal cannot consider your request for the return of the deposit unless you do this.*

If you also want to pursue the present application which relates to a failure by the landlord to lodge the deposit in a tenancy deposit scheme you must provide the tribunal with the date on which the tenancy ended and evidence of this, if available. This information is missing from your recent letter. The application cannot proceed without this information. Please also note that if you tenancy ended more than three months ago the application cannot proceed as the application will be out of time. If you wish to withdraw this application, please confirm the position. Please reply to this office with the necessary information by 21 October 2021. If we do not hear from you within this time, the President may decide to reject the application”

6. To date no reply has been received.

B DECISION

1. 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."

- 2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65**First-tier Tribunal orders]) of the 2011 Regulations, the application must—

(a)state—

(i)the name and address of the tenant or former tenant;

(ii)the name, address and profession of any representative of the tenant or former tenant; and

(iii)the name, address and registration number (if any) of the landlord;

(b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c)evidence of the date of the end of the tenancy (if available); and

(d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

D REASONS FOR DECISION

1. The FTT has considered the application on the basis of all information provided by the applicant. The documents and correspondence in the case file are referred to for their terms and held to be incorporated herein.
2. The application is made under rule 103 of the Procedural Rules. Rule 103 (a) and (c) of the Procedural Rules states that such an application must state the name and address of the tenant or former tenant and must state evidence of the date of the end of the tenancy (if available).
3. The application showed an address for the applicant which was not the address stated in the lodged tenancy agreement. This evidences that at the time the application was initially lodged the tenancy had already come to an end.
4. The application provided no information of the end date of the tenancy although the tenancy had clearly come to an end.
5. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(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.” Regulation 10 then states: “If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit...”
6. The FTT repeatedly requested the information missing from the application and ultimately the applicant did not provide the information despite these requests.
7. The applicant was advised by the FTT that an application under rule 103 can only be made within the 3 month period after the tenancy ends. She still has not provided confirmation of the end date as required in terms of rule 103 (c).

8. In terms of rule 5 (3) of the Procedural Rules “the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.” In this case the full information required for the application, in particular the information about the end date of the tenancy has still not been lodged. Unfortunately for the Applicant, in terms of Rule 5 (3) of the Procedural Rules by now 3 months since the lodging of the application have passed and this means that since the applicant moved out of the property prior to lodging the application it is now too late to make a valid application to the FTT under Rule 103 because of the clear definition of the date when the application is made as stated in Rule 5 (3) and of the time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
9. It would not be appropriate for the FTT to accept an application that has been made out of time and it would not be possible for the FTT to accept an application which was not competently made because it did not contain all relevant information.
10. The application is thus rejected.
11. Obviously this does not affect any rights of the applicant to make an application under rule 111 for other issues raised in the initial application. Rule 111 applications are not time limited in the same way as rule 103 applications.

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-McFatrige



Petra Hennig McFatrige
Legal Member
9 November 2021