



**DECISION AND STATEMENT OF REASONS OF JAN TODD, 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/22/4503

Parties

Miss Daryl McLeod, Mr James Wilson (Applicant)

Mrs Sandra Mawson (Respondent)

Quoybanks, North Ronaldsay, North Ronaldsay, KW17 2BG (House)

1. On 28th December 2022, an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules, being an application for an order for a penalty for failure to pay a tenancy deposit into a tenancy deposit scheme by the Tenant against the Landlord.
2. The Applicant advised they did not have a copy of a tenancy agreement as one had never been provided. They provided evidence of payment of the deposit and correspondence between the parties showing when the tenancy started and when it finished. They also provided evidence the deposit had not been paid into a scheme. The advised they moved out and the tenancy ended on 23rd August 2022.
3. The Tribunal wrote to the applicant by letter dated 9th January 2023. The Tribunal asked for the following information:-

"A Rule 103 application must be made within 3 months of the tenancy ending. This application would appear to be time-barred as the tenancy ended more than 3 months ago. Please confirm that this is the case and withdraw the application. The Tribunal has no discretion in this matter.

2. In the event that the application is not time-barred (i.e. if it did not end more than 3 months ago), please:

- (i) provide a copy of the tenancy agreement or as much information as possible about the terms of the tenancy.
- (ii) (ii) Consider redacting any personal information from the bank statements submitted, as all documentation will be served upon the Respondent.
- (iii) (iii) Confirm that the tenancy deposit scheme information lodged with application number FTS/HPC/CV/22/4502 can be transferred to this application."

4. No response was received from the Applicant and the Tribunal wrote again on 2nd February 2023 repeating the request for that further information and giving another 14 days to respond.

5. The Applicant responded on 6th February and advised:-

"Hello,

We can confirm that it was more than three months since we left when we put in this claim. It says here you have no discretion in this matter. However, this is an exceptional circumstance, which I am aware has to be taken into account. We were strung along for weeks and weeks by the landlord after the end of the tenancy. In fact, she insisted she was in the process of returning the deposit for a month and a half until she stopped responding to us entirely. It was only after 2 months it became completely clear that we were going to have to take legal action. All of this is documented in the messages in evidence.

Had this deadline been made clearer on the application, we may have put in the application sooner. However, I was under the impression that putting in an application too soon would go against us in terms of compensation, given that the landlord in question was insisting she was in the process of returning the deposit. She is an old lady who was an inadequate landlord, taking months to fix essential repairs. We had to give her adequate time to respond as we lived in a small island community (70 residents) and resorting to tribunal was very much a last resort for us, as our relationship with the landlord affects our welfare.

Please reconsider this application, as this is absolutely clear cut. She has very clearly stated that we are due this money and she will pay it to us. Only to stop all correspondence. It is possible she was aware of this deadline and attempting to bypass it. There is no good reason this application should not be considered."

6. DECISION

7. I considered the application in terms of 8 of the Procedural Rules. Those Rules provide:-

8.

"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."

9. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

10. The Tribunal has requested further information from the applicant in order to consider whether or not the application can be accepted or whether it must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. '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"*. It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success. The Tribunal also has to consider whether there is good reason to believe it would not be appropriate to accept the application.
11. The applicant has confirmed that they have submitted the application under Rule 103 after 3 months from the date of the end of the tenancy. Regulation 9 of the 2011 Regulations states:-
"9(1) A Tenant who has paid a tenancy deposit may apply to the (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 by (summary application) and **must** be made no later than 3 months after the tenancy has ended."*
12. Applications were formerly made to the Sheriff by summary application but now need to be made to the Tribunal. Given the strict terms of Regulation 9 (2) the Tribunal has no discretion to consider an application for a penalty for failure to lodge a tenancy deposit in a tenancy deposit scheme which has been made after the 3 months has passed. The wording in the Regulation is clear **"an application must be made"**. There is no discretion in the legislation. The Applicant admit they left the Property on 23rd August 2022 and the application was not submitted until 28th December 2022. The Application is therefore time barred. As such it is futile and has no prospect of success as it is timebarred.
13. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural

Rules.

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.

Jan Todd

Legal Member
7th February 2023