

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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

10 Lochlea Avenue, Mauchline, East Ayrshire, KA5 6BW

Case Reference: FTS/HPC/PR/19/4065

Mrs Amy Cunningham, 14 Campbell Court, Newmilns, KA16 9BW ("the applicant")

Donald Ross Residential, 11 Beresford Terrace, Ayr, KA7 2ER ("the respondent")

1. On 23 December 2019 an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules being an application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits.

The following documents were enclosed with the application:-

- Copy Tenancy Agreement
- Copy email correspondence between the applicant and respondent
- Picture evidence of deposit payment
- Standing order mandate

At section 7(c) of the application form (details of the order being sought from the Tribunal) the following detail is provided:

"I receive a reduced return of £380 direct from Donald Ross after they asked for my bank details personally via email. I seek my full refund of £460 back as the £80 deducted was for apparent arrears of 2 day rent which in untruthful as per contract supplied and £40 in damages which were not substantiated. I was never provided with a check out report."

By letter dated 6 January 2020, the Tribunal wrote to the applicant in the following terms:

"We note you have made an application in terms of Rule 103. This relates to an application for an order for payment where a landlord has failed to carry out duties in relation to tenancy deposits. Please can you confirm the exact date you moved out of the Property as applications under this Rule are subject to strict time limits. In addition the Tenancy Deposit Schemes (Scotland) Regulations place duties on landlords not letting agents and you may wish to seek advice from a solicitor or advice agency on whether you would wish to amend your application in this regard."

You state that you are seeking the difference between the deposit you paid and the sum you received from your former landlord's letting agent. You may wish to consider submitting a separate application in this regard."

A response to this letter was requested by 20 January 2020. The applicant was advised that if the Tribunal did not have a response by this date, the President may decide to reject the application.

The Tribunal heard nothing in response to this letter and wrote again on 29 January 2020 asking for a response by 12 February and again warning that if

there was no response by this date, the President may decide to reject the application.

There was no response and the Tribunal wrote again on 27 February 2020 referring again to Rule 103 and detailing the provisions of the 2011 Regulations and advising the applicant that if she wished to proceed she must indicate this in writing and provide an amended page 2 part 3 of the application form. The applicant was advised to do so by 12 March 2020 failing which the President may decide to reject the application. There has been no response..

DECISION

2. 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."

3. 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

4. The Tribunal has requested further information from the applicant in order to consider whether or not the application 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.
5. The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

6. 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.

Anne Mathie
Legal Member
20 March 2020