Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations")

Chamber Ref: FTS/HPC/PR/22/0008

Re: Property at 26 South Victoria Dock Road, Dundee, DD1 3BQ ("the Property")

Parties:

Miss Eilidh Blair, Creag an Iar, Corriecravie, Isle of Arran, KA27 8PD ("the Applicant")

Mrs Nina Bansal, 4 Leven Drive, Bearsden, G61 2EE ("the Respondent")

Tribunal Members:

Steven Quither (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application is to be REJECTED as having been made out of time.

1. BACKGROUND

The Applicant and an Emma Giles were tenants and the Respondent the landlord under a Private Residential Tenancy Agreement ("PRT") of the Property commencing 18 November 2020 and which came to an end on a date which initially appeared, based on information available, to have been at or about the beginning of October 2021, by virtue of expiry of a period of notice given to the Respondent on 6 September 2021 by e-mail from the Applicant, which e-mail was not lodged with the initial application. This was the second such PRT between the parties in respect of the Property and, in effect, continued the Applicant's occupancy of the Property but with a different co-tenant from the previous PRT.

This application was lodged by e-mail on 2 January 2022 and, after consideration by the Tribunal, including a request for further information dated 7 January 2022, was accepted by Notice of Acceptance of 26 January 2022, accompanied by a Notice of Direction, by virtue of all of which, a Case Management Discussion ("CMD") was then fixed for 4 April 2022.

Prior to that CMD, both parties lodged lengthy notes and supporting documentation.

On the part of the Applicant, this appeared to be by way of response to said Notice of Direction and substantively comprised 3 e-mails of 15 February 2022, sent at 4-56pm, 4-57pm and 5-12pm, with a degree of duplication, but containing in total:--

a) Response to Notice of Direction;
b) SafeDeposits Scotland ("SDS") Deposit Protection Certificate under reference DAN601537 dated 24 November 2020 for £750 deposit paid by the Applicant and Emma Giles in respect of the Property;
c) E-mail from SDS to the Applicant dated 1 July 2020;
d) E-mail from SDS to the Applicant dated 21 November 2020;
e) E-mail from SDS to the Applicant dated 23 November 2020;
f) SDS Report of Independent Adjudication regarding deposit reference DAN601537, with covering e-mail, dated 28 January 2022; and
g) E-mail from SDS to the Applicant dated 15 February 2022.

For her part, the Respondent sent an e-mail on 9 March 2022, attaching:--

a) Preliminary Matters/Written Representations;
b) Answers to Applicant's e-mail of 4-57pm on 15 February 2022;
c) (Note of) "Relevant Legislation", with further submissions/representations;
d) Inventory of Productions, with relevant productions, comprising:--
   1.1 Text messages;
   1.2 & 1.3 E-mails from SDS to the Respondent dated 21 & 23 November 2020 regarding deposit reference DAN559469;
   2.1 WorldPay CARD Transaction Confirmations dated 21 November regarding SDS reference DAN601537;
   2.2 SDS Deposit Protection Certificate under reference DAN601537 dated 24 November 2020 for £750 deposit paid by the Applicant and Emma Giles in respect of the Property;
   3 Text messages;
   4.1 E-mails between Kaler Developments and the Applicant dated 15 & 16 November 2020;
   4.2 Text messages;
   5 E-mail from Applicant dated 16 July 2021;
   6 E-mail from Elaine Giles to Kaler Developments dated 13 August 2021;
   7 Text messages; and
   8 PRT between Applicant, Emma Giles and the Respondent commencing 18 November 2020, with accompanying Scottish Government guidance Information,

all of which documentation was available to the Tribunal on 4 April.

2. CASE MANAGEMENT DISCUSSIONS

a) 4 APRIL 2022

ISSUES TO BE RESOLVED

At this stage, these appeared to be whether the Respondent was in breach of her obligations under Regulations 3 and 42 of the 2011 Regulations, which state, respectively:--

"3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42." and

"**42.**—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

(2) The information is—

(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;

(b) the date on which the tenancy deposit was paid to the scheme administrator;

(c) the address of the property to which the tenancy deposit relates;

(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;

(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and

(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

(3) The information in paragraph (2) must be provided—

(a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation;….".

In addition, Regulation 9 of said Regulations provides:--
"**9** (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 of that tenancy deposit.
(2) an application under paragraph (1) must be made no later than 3 months after the tenancy has ended."

There also required to be considered the Respondent's preliminary matters, as above referred to, contained in her e-mail of 9 March, (considered as undernoted).

Both parties attended by teleconference, the Applicant being accompanied by her mother, also Eilidh Blair.
In view of the preliminary matters raised by the Respondent, the Tribunal was concerned to confirm to what extent the CMD could proceed and how content the parties were for it to do so.
The Respondent's preliminary issues, based on her note of same, above referred to, were discussed and dealt with as follows:--

a) Various items referred to in Tribunal documentation served on her by sheriff officer on 21 February were not enclosed, most notably items listed by the Applicant in an "Inventory of Enclosures", comprising 8 in total, including as no 8 , "Emails by tenants to Landlord on 6 September 2021, giving 28 days notice to terminate Lease", annexed to the Applicant's "Tenants Statement and

Inventory of Evidence" dated 6 January 2022 (referred to at Section 8 of the application form as "Report to Safe Deposits Scotland and hereinafter referred to as "the Report"), which the Applicant confirmed had been sent to SDS in connection with the Adjudication regarding deposit reference DAN601537. Said documents were not available to the Tribunal for the CMD either. Neither the Tribunal nor the Respondent could consider the relevancy of any of these documents without obviously seeing them. The Applicant undertook to lodge the items. In any event, the Tribunal confirmed it would issue a Notice of Direction in respect of them.

b) The Respondent queried the grant of the extension by the Tribunal to 15 February 2022 for the Applicant to comply with Notice of Direction of 26 January. It was explained to and accepted by her that this was in the discretion of the Tribunal at that stage of the application.

c) The Respondent further queried why she had heard nothing about the Notice of Direction of 26 January until she received a copy of it among papers served on her by sheriff officer on 21 February. She felt this should have been sent to her sooner than this. From the Tribunal file, it is noted that same was sent to the Applicant on 26 January 2022.
The Tribunal referred to Rule 16(2) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, ("the Rules") which states:-
"(2) Directions may be given orally or in writing and must be intimated to every party.".
The Respondent's point was that she had only received this on 21 February 2022, just under a month after it was made and intimated to the Applicant.
The Tribunal undertook to raise this as a procedural matter, even though there did not seem to be any prejudice occasioned to the Respondent.

d) The Respondent had a similar position regarding the Tribunal's Notice of Acceptance of 26 January 2022, which again she only received by sheriff officer service on 21 February.
The Tribunal referred to Rule 9(1) of the Rules, which states, (where an application is not being rejected under the preceding regulation):- "the First-tier Tribunal must, **as soon as practicable**, give notice to each party ….). It was noted that the acceptance was sent to the Applicant on 26 January, but not to the Respondent till the later date, leaving a question as to whether it might be equally "reasonably practicable" to give it to a Respondent at the same time.
Again, the Tribunal undertook to raise this as a procedural matter, although again there did not seem to be any prejudice occasioned to the Respondent.

e) The Respondent had a similar position regarding the Tribunal's letter to the Applicant of 7 January, requesting further information which, again, she only received on 21 February. Similarly to the extension referred to in preceding paragraph b) herein, it was explained to and accepted by her that this was in the discretion of the Tribunal at that stage of the application. In any event, if the Applicant had replied to it, she had not received any intimation of that response, which she was now seeking, if such had been made.

By way of response to the various points raised by the Respondent, the Applicant and her mother confirmed that until she received the Notice of Direction, she felt the application had perhaps been rejected, suggested as a possibility in said letter of 7

January. She would check if she replied separately to said letter and confirm the position. Again, the Tribunal confirmed it would issue a Notice of Direction regarding any such response.

FACTS AGREED BETWEEN THE PARTIES

In view of the preliminary matters previously referred to and still outstanding, it was not possible to identify many matters of agreement between the parties. However, it appeared clear from consideration of documentation from both that there was a SDS Deposit Protection Certificate under reference DAN601537 dated 24 November 2020 for a £750 deposit paid by the Applicant and Emma Giles in respect of the Property. Accordingly, that payment to SDS appeared capable of agreement, subject to any further representations by the parties.

ISSUES TO BE ADDRESSED/ DOCUMENTS AND OTHER EVIDENCE REQUIRED

The Tribunal considered it would require to consider with the parties any further documentation lodged by them, either by their own accord or in accordance with its Notice of Direction, as well as focussing on what remained to be addressed and if indeed there could be agreement about the lodging of the deposit as vouched by SDS Deposit Protection Certificate under reference DAN601537. Documentation which appeared to be outstanding and which it appeared would assist the Tribunal in considering this application appeared to be:--

a) The 8 items listed by the Applicant in the Report, which items included the Applicant's "notice to terminate Lease", dated 6 September 2021;
b) Any response by Applicant to Tribunal's letter of 7 January 2022; and
c) Any communication sent by the Respondent and/or received by the Applicant providing information to the Applicant in respect of deposits under SafeDeposits references DAN559469 and DAN601537 in terms of Regulation 42 of the 2011 Regulations

in respect of all of which it issued a Notice of Direction to the Applicant for a) and b) and to both parties for c).

FURTHER CMD

In all of the circumstances, the Tribunal considered it just to fix a further CMD to enable parties to provide the information referred to and for them and the Tribunal to consider same. A date was duly assigned for 13 June 2022.

b) 13 JUNE 2022

Prior to same, along with accompanying e-mail of 4 May, the Applicant had lodged further documentation, namely:--

a) Said 8 items referred to in her "Inventory of Enclosures"; and
b) Note of further representations regarding her application.

She also clarified various issues regarding data protection issues regarding videos referred to by her.

On the morning of the CMD, in response to a request from the Tribunal, she also lodged:--

c) E-mail attaching WhatsApp messages (undated) received by her from "Bobby", an associate of the Respondent, which was copied to the Respondent prior to commencement of the CMD

The Respondent did not lodge anything further for this CMD.

ISSUES TO BE RESOLVED

As previously, for the CMD on 4 April, as well as any further issues arising out of the further information etc. lodged by Applicant, as above referred to.

The Tribunal also confirmed with the Respondent she had received the e-mail sent by the Applicant on the morning of the CMD, above referred to and afforded her time to consider the terms of same. Having done so, she confirmed she did not seek time to consider it further but advised she had a preliminary matter she wished to raise. After discussion with the Tribunal, she was content to do so after the Tribunal had heard from the Applicant, as narrated hereafter. She confirmed also she had not lodged any further documents or representations since the previous CMD.

FACTS TO BE AGREED

As previously, regarding the SDS Deposit Protection Certificate under reference DAN601537.

ISSUES ADDRESSED/ DOCUMENTS AND OTHER EVIDENCE REQUIRED

The Tribunal considered and discussed the following with the Applicant, noting her position to be as follows:--

a) The photographs lodged as part of her additional information after the first CMD were taken from an accompanying set of 2 videos, essentially showing the condition of various areas of the Property, submitted just for general information, although the videos showed more. She had lodged these to comply with the Tribunal's Notice of Direction, as opposed to for any specific evidential reason;
b) Her application sought an award in recognition of any failure by the Respondent to comply with her duties as a landlord. She had had to make numerous enquiries about relevant information regarding her deposit, which she did not feel she should have had to do if such duties had been complied with. However, she could accept and agree the placement of the deposit with SDS under reference DAN601537;
c) She felt the Respondent had failed to comply with Regulation 42 (a) – (b) and (d) –(f), but was prepared to accept there was no issue regarding 42(c), since she was aware of the address of the Property;
d) She advised that the Respondent's Production 1.1 was an exchange of text messages between her and "Bobby", whereas she thought production 3 was a similar exchange between Emma Giles and "Bobby", making the point that she had not received any such similar information as contained in Production 3, confirming lodgement of the deposit and was unaware of the conversation as contained in it. Production 1.1 left matters unresolved as to the deposit. The Respondent confirmed this to be her understanding also as to the parties to her Production 3;
e) Whereas for the first lease, the Applicant had received an email from SDS dated 1 July 2020, she received nothing similar in respect of the second lease due, apparently, to an error by the Respondent in advising the Applicant's e-mail address to SDS (characterised by the Applicant as "false"). It was agreed that the Applicant's share of the deposit for the first lease would be used as her share of the deposit for the second lease, the mechanism being that it would

be refunded to the Respondent and then lodged of new with SDS, as narrated in SDS e-mails to her of 21 and 23 November 2020, both lodged by her;

f) Thereafter, she heard no more about the deposit from the Respondent until initial steps were taken to leave the Property in about July 2021, which she did not in fact do until October 2021, following on her intimating notice to leave by e-mail of 6 September, giving 28 days notice of her intention to do so. When asked by the Tribunal why she did not raise the issue of the deposit during that intervening period, between November 2020 and July 2021, she advised that she and her flatmate had had some issues with "Bobby" and they simply wished to have as few dealings with him and the Respondent as they could;
g) She moved out from a practical point of view round about July 2021, although did not formally bring the lease to an end until the end of the notice period starting in September. She received a response to this (second) Notice to Leave, from Kaler Developments, dated 9 September 2021, containing simply general advice as to removal of her belongings etc;
h) It was only about this time, when she was contacted by SDS regarding the deposit that she found out it had indeed been deposited with them, which process duly proceeded to SDS adjudication.

Accordingly, the Applicant's position was that the Respondent had not done what she should have done under Regulation 42. The Applicant should have been left in no doubt that her deposit had been properly lodged with SDS.

By way of response, the Respondent referred to her earlier reference to a preliminary matter, in particular her concern that by reference to Rules 5(1) and (3) and 103 of the Rules, the application had not been lodged in time, since the requirements of those rules had not been met.
Rules 5(1) and (3) state, respectively:--

"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." and

"(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."

Rule 103 states:--
"103. Where a tenant or former tenant makes an application under regulation 9 (court 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."

The Respondent founded upon the penultimate and last lines of Rule 5(3), stating that since the "evidence" of the date of the end of the tenancy had only been provided by the Applicant by way of answer to the Tribunal's Notice of Direction following upon the first CMD, ie on 4 May 2022, this was the last outstanding document required in order to comply with Rule 103. Accordingly, the application was timebarred and, indeed, should not have been accepted by the Tribunal in terms of its Notice of Acceptance of 26 January 2022, especially when the Applicant had apparently failed to respond to the request by the Tribunal for more information dated 7 January 2022.
The Tribunal retired to consider this submission and was able to satisfy itself that the documents which accompanied the application had been the PRT and the Report. Document 3 as listed in the application, ie "3. TENANTS' EMAIL TERMINATING LEASE" had not been sent with the application.
When the Tribunal reconvened, the Respondent then referred to 2 First-tier Tribunal cases by way of authority for her proposition, namely:--

O'ROURKE v STENHOUSE FTS/HPC/PR/21/2801 and
JOHNSTON & BRABBS v DHILLON FTS/HPC/PR/21/2372

neither of which had been previously intimated to either the Tribunal or the Applicant. She pointed out that this was the first time she had had the opportunity to raise this issue, there being no apparent provision in the Rules for preliminary pleas or suchlike. Her position was that both cases were in point with this case and that the former of these cases contained a reference to 2 Upper Tribunal decisions holding that this Tribunal has no discretion as to the lodging requirements stated in primary legislation and regulations.

However, this reference to case law raised a very practical difficulty, in that the Applicant was neither legally qualified nor legally represented nor had she obviously seen the cases before
The Tribunal advised it considered it only just for the Applicant to be given the opportunity to consider these 2 cases as best she could and not be, or feel she was being, pressurised into considering them at the CMD. It advised of its intention to fix a further CMD to enable her to consider them.
The Applicant referred to Section 8 of the application, pointing out that the wording of it, by use of the word "can", did not advise the application **must not** be accepted if the documents listed as being included were not, in fact, included.
At this point the Applicant asked if her mother could address the Tribunal, which the Tribunal was content to do. However, as opposed to advancing matters on the Applicant's behalf, her mother criticised the Respondent's presentation of her case and how the Tribunal was dealing with it, matters upon which the Tribunal required to provide clarification.

The Applicant then asked how it was fair that the Respondent could lodge new, or additional, evidence, in the form of the 2 cases. Again the Tribunal provided clarification of the position to the Applicant.
In all of these circumstances, the Tribunal considered it just to fix a further CMD, to enable the Applicant to consider her position in view of the 2 cases now lodged by the Respondent, which was duly fixed for 5 September 2022 at 10am.

c) 5 SEPTEMBER 2022

Prior to same, the Tribunal asked parties to lodge any further representations or references to authorities by 30 August.
By way of response to this, the Applicant lodged further documentation by e-mail on 25 August, namely:--

a) Note of Further Representations, dated 23 August 2022; and
b) E-mail referring to 5 further items of information, requesting clarification as to whether the Tribunal had same.

For her part, the Respondent lodged by e-mail on 30 August the full texts of 5 cases by way of authority, namely the 2 cases referred to previously and also:--

SCANLON v O'HARA FTS/HPC/PR/22/0089;
DEANS v SMITH FTS/HPC/EV/21/2071; and
FELLOWS v DICKSON FTS/HPC/PR/21/0664

On the morning of the CMD, the Tribunal became aware of a possible difficulty regarding the Respondent's fitness to attend and/or participate fully in the CMD, advised to the Tribunal by email on 4 September.
Notwithstanding her apparent indisposition, the Respondent again joined by teleconference for the CMD start at 10am, as did the Applicant.
Upon the question of her fitness being canvassed, the Respondent advised she would find it quite difficult to participate in the CMD and accordingly was seeking a postponement.
The Applicant was practical and compassionate in her response to the Respondent's request.
In these circumstances, the Tribunal considered it just to postpone the CMD and fix a further CMD, date and time to be confirmed and advised to the parties in due course.
A further CMD was duly fixed for 17 November. However, this required to be adjourned due to circumstances rendering me unavailable for same and a further CMD was then fixed for 11 January 2023.

d) 11 JANUARY 2023

On the morning of the CMD, the Tribunal became aware of a possible difficulty regarding the Applicant's ability to attend and/or participate fully. She had advised by e-mail of 4-18pm on Tuesday 10 January that due to difficulties with the ferry service to Arran, she would not be able to travel there to join her mother, who provided support and guidance to her, which support and guidance she considered necessary due to her suffering from severe anxiety related disabilities. Accordingly, she was seeking to postpone the CMD. Her e-mail was respectful and apologetic.

Prior to the CMD, the position was canvassed informally with the Respondent, who advised she would wish to address the Tribunal on the matter. Accordingly the CMD called as scheduled at 10am, when only the Respondent attended.
Whilst appreciating the Applicant's position as contained in her e-mail copied to her, the Respondent pointed out she found the situation somewhat frustrating, in that she had made appropriate domestic arrangements to facilitate her own attendance, as well as preparing for the CMD. She enquired as to whether it might be possible for the Applicant's mother to nonetheless attend the CMD by telephone, but appreciated the Tribunal's interpretation of the Applicant's e-mail that the Applicant seemed to wish her mother to be physically present beside her, which was apparently not possible.
Upon a request to do so, the Tribunal confirmed the basis on which the previous CMD on 17 November was adjourned.
It also confirmed that there was presently before it 2 issues, namely whether the application had been made timeously and, if so, the merits of the application itself.
The Respondent enquired as to whether she might intimate a further case authority to the Tribunal and was advised she was free to do so with any further representations she considered appropriate.
In all of these circumstances, the Tribunal considered it just to adjourn the CMD and fix a further CMD, date and time to be confirmed and advised to the parties in due course, which was duly fixed for 8 March.
In its subsequent CMD Note, the Tribunal indicated it would expect both the Applicant and her mother to join any future CMD from separate locations by telephone in future, if a similar situation arose again.

e) 8 MARCH 2023

Prior to same, with accompanying e-mail of 27 February, the Respondent had lodged further documentation, namely:--

a) Written Representations; and
b) Text of further authority, namely:--

For her part, the Applicant had, with accompanying e-mail of 3 March, lodged:--

a) Statement; and
b) Comments regarding the original 5 cases lodged by the Respondent.

This had apparently been sent by post to the Respondent on 7 March and the Tribunal instructed it to be sent to her by e-mail shortly before the CMD was to commence.
The CMD duly took place again by teleconference, parties as previously with the Applicant accompanied by her mother.

The Tribunal afforded the Respondent time to check she had received the further information from the Applicant and also time to read over and consider same. Having done so, she was content for the CMD to proceed.
She confirmed that in essence she was content to rely on her written representations previously sent to the Tribunal, emphasising that the cases lodged by her made clear that the Tribunal had no discretion to relax the lodging requirements of Rule 103, that the Applicant's e-mail of 6 September was clearly available to her and accordingly

should have been lodged with the application, that it was only eventually lodged on 4 May 2022 and on that account and under reference to Rule 5, the application as originally made was incomplete and only became complete at that date, well outside the 3 month time limit for same allowed by Regulation 9.
Upon being asked by the Tribunal, she accepted that the cases lodged were illustrative and persuasive only, not binding and that her position might be different if only verbal notice had been given, a scenario which she considered would be highly unusual and a departure from her usual practice. However, the position here appeared clear and the application should be treated as timebarred.

The Applicant similarly was content to rely upon her written representations, adding that she considered the notice did not require to be by e-mail and, in any event, she had provided "evidence" of the end date on in no less than 4 locations (at pp4, 9 and twice on p12) in the Report. Accordingly, since that information about the end date of the tenancy had been lodged, Rule 103 was satisfied and she had not thought it necessary to lodge the email with the application, pointing out she did so on 4 May in response to the Tribunal's direction.
Furthermore, evidence did not require to be probative in any event.

The Respondent only briefly reiterated her position that the e-mail was the evidence of the end date of the tenancy and had been available, so should have been lodged, but was only lodged far too late on 4 May.

3. FINDINGS IN FACT

Insofar as relating to the preliminary argument advanced by the Respondent that the application is timebarred and should be rejected/dismissed, I find the following:--

a) The parties entered into a PRT in relation to the Property, commencing 18 November 2020, in respect of which the Applicant paid a deposit, facilitated by SDS applying towards this PRT part of a deposit received by it for a previous PRT between these parties but with a different additional tenant;
b) The tenancy came to an end on 4 October, in terms of a Notice sent by the Applicant by e-mail on 6 September, both 2021, giving notice of her ending the tenancy on 4 October.
c) The Applicant made this application by e-mail on 2 January 2022.
d) Despite reference being made at Section 8 of the application to said Notice of 6 September (referred to as "TENANTS EMAIL TERMINATING LEASE") being included with the application, it was not so included.
e) Said Notice was available to the Applicant when she lodged her application.
f) Said Notice was submitted to the Tribunal along with other documentation on 4 May 2022, in response to a Direction from the Tribunal for same to be lodged.
g) This application became compliant with the lodging requirements of Rules 5 and 103 on 4 May 2022.
h) The time limit for lodging an application compliant with said rules was 4 January 2022.
i) This application was made out of time and falls to be rejected.

4. REASONS FOR DECISION

As well as Rules 5 and 103 previously referred to, the Tribunal also considered Rule 8, which 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."

By reference to Regulation 9, it is clear that the application required to be made within 3 months of the date the tenancy ended ie by 4 January 2022. With further reference to Rule 5, the application would only be regarded as having been made when it was compliant with Rule 103, in terms of which Rule the Applicant's e-mail Notice of 6 September 2021 required to be lodged as evidence available of the date of the end of the tenancy.
It was not so lodged, whether by oversight, misjudgement, misunderstanding or otherwise. Accordingly the application was incomplete and only became complete on 4 May 2022 when said Notice was lodged, well after the 3 month time limit under Regulation 9. Unfortunately for the Applicant, in terms of Rule 5(3) by then it was too late to for her to salvage her Rule 103 application 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 of the 2011 Regulations.
The Applicant asked the Tribunal to consider that the Report could be treated as "evidence" for the purposes of Rule 103, on the basis that it contained sufficient information as to the end date of the tenancy. However, the Tribunal did not consider this to be evidence but information which could possibly be proved by production of relevant evidence in due course. Accordingly, it did not agree with the Applicant on this crucial point.
The Upper Tribunal has previously confirmed that the Tribunal is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do meet the statutory requirements for such applications.
In UT 18 [2019[Sheriff Deutsch stated " [1] The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect

identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and subordinate legislation in the form of regulations made by the Scottish Ministers.
In UT 60 [2019] Sheriff Di Emidio stated "It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT's decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant."
Accordingly, it is clear beyond doubt that the Tribunal has no discretion to depart from the provisions of Rules 5 and 103.
In relation to the cases lodged for assistance of the Tribunal, the case of **MacDONALD v BEST** seemed particularly relevant, referring as it did to an Applicant's e-mail confirming the end date of the tenancy being lodged outwith the required period.

5. DECISION

After consideration of the application, associated documentation, parties' written and verbal representations and correspondence, the Tribunal considers that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis that the Tribunal has good reason to believe that it would not be appropriate to accept the application on account of it not having been lodged in compliance with Rules 5 and 103 within the 3 month time limit provided by Regulation 9.
During the last CMD, reference might have been made to dismissal of the application, but the Tribunal is content the proper disposal is rejection, rather than dismissal. The practical effect is the same in any event.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Steven Quither

8 MARCH 2022

Legal Member/Chair **Date**