

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 (“the Rules”)**

Case reference FTS/HPC/PR/21/2098

Parties

**Mr Marcus Holmes (Applicant)
UNKNOWN UNKNOWN (Respondent)**

12 Radnor Street, Glasgow, G3 7UA (Property)

1. On around 31 August 2021 at 15.58, an application was received from the Applicant. The application was made under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) being an application for an order for payment where the landlord has not paid the deposit into an approved scheme.
2. The application was unsigned and undated. The application did not contain any details about the name and address of the respondent. An email advising that the end of the tenancy was 31 May 2021 was attached. A copy of the tenancy agreement was attached. The application appeared to have been attached to a covering email dated 31 August 2021.

DECISION

3. I have considered the application terms of Rule 8 of the Chamber 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.”

4. After consideration of the application, I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

5. “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. 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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.
6. The Tenancy Deposit Schemes (Scotland) Regulations 2011 provide that:-

9.—(1) A tenant who has paid a tenancy deposit may apply to the [Housing and Property Chamber 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 by summary application and must be made no later than 3 months after the tenancy has ended.

7. Applications for an order for payment where the landlord has failed to carry out duties in relation to tenancy deposits are made in accordance with rule 103 of the tribunal rules. Rule 103 provides that an application must state the name and address of former tenant; name, address and registration number of the landlord; be accompanied by the tenancy agreement or as much information about it that the tenant can give; evidence of the date of the end of the tenancy; and be signed and dated by the tenant.
8. Rule 5 (1) of the tribunal rules provides that 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 ... 103 ... as appropriate. Rule 5 (3) further provides that the President can request further information if it considers that the application has not been made in the prescribed manner, and the application is held to be made on the date that the first tier tribunal received the last of any outstanding documents necessary to meet the required manner for lodgement.
9. One of the requirements therefore of the Tenancy Deposit Schemes (Scotland) Regulations 2011 is that any application to the tribunal for an order under rule 103 must be made no later than 3 months after the tenancy has ended. The meaning of “making an application” is set out in rule 5 of the tribunal rules. In the present case the Applicant has provided information which states that the tenancy ended on 31 May 2021. It appears that the Application was emailed on 31 August 2021 at 15.58. The Application was incomplete when it was received as the form did not contain details about the respondent (landlord) and was not signed and dated. Further information would have been required to have been requested had there been any time to do so in order to comply with rule 103. On 1 September 2021 when the tribunal first processed the application the statutory time period in which to bring an application under rule 103 had expired. 1 September 2021 is a date later than 3 months after the tenancy ended. As at 1 September 2021, the applicant had not fully complied with the terms of rule 103 and in terms of rule 5 and application had not therefore been made.
10. The tribunal must be satisfied that the requirements of the regulations have been met, in this case the application has not been made within the 3 month period as required by regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011. Accordingly, I do not consider that the First-Tier Tribunal could competently entertain this application.

11. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met and the application should therefore be rejected.

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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

M Barbour

15 September 2021

Legal Member/Chair

Date