



**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

42 NORTH ST, ST ANDREWS, KY16 9AQ ("the property")

Case Reference: FTS/HPC/PR/21/0099

Parties

MS AUDREY HERIZ-SMITH (Applicant)

MS CAROL MACMILLAN (Respondent)

1. The application dated 15 January 2021 was submitted to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 by email from the applicant. The application was sent together with a copy of a tenancy agreement and with the explanation provided in part 8 of the document that,

whilst no written evidence for this can be provided, the tenancy ended on 31 December 2019.

2. On 25 January 2021 the FTT wrote to the applicant as follows:

*"Before a decision can be made, we need you to provide us with the following:
You have indicated that your tenancy ended in December 2019. An application under Rule 103 and the Tenancy Deposit Regulations must be submitted within 3 months of the tenancy coming to an end. If the tenancy ended in December 2019 this application cannot proceed. Please clarify the position.*

If you wish to seek an order for repayment of the deposit you should submit a fresh application under Rule 111. This should be accompanied by a copy of the tenancy agreement and evidence of payment of the deposit. Please confirm if you wish to proceed on this basis "

3. On 27 January 2021 the appellant replied:

"To whom it may concern,

I am writing in regards to extenuating circumstances which were the cause of my application to the Tribunal not being made within 3 months of the end of my tenancy at 42 North St. On the 15th of March I was in a life-threatening accident resulting in a severe traumatic brain injury requiring emergency surgery and hospitalisation. This was the day before my reading week for university when I had intended to complete and submit my application to the Tribunal. The combined difficulties presented by covid and my recovery have meant that I was not in a position to submit my application until January 2021, which I was able to complete and submit on the 15th. I am able to provide the necessary documentation from the hospital to confirm this injury and its severity, please let me know if this is necessary."

4. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

DECISION

5. 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."

6. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

7. Relevant provisions:

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

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.

Reasons:

8. It would not be appropriate for the Tribunal to accept an application after the expiry of the period during which such an application can be made. The legislation is clear, in terms of regulation 9 as set out above an application under regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made no later than 3 months after the tenancy has ended.
9. Whilst the applicant has provided reasons why the application was not made sooner, this does not affect the expiry of the deadline for an application of that nature. The application is made outwith the 3 months period as it was made on 15 January 2021 and thus more than a year after the tenancy had ended on 31 December 2019.
10. The applicant is obviously free to lodge any application under other Rules which are not time critical. She had been previously advised that part of her claim would not be covered by her application under Rule 103 of the Procedural Rules but that an application under another Rule could be made for that element of her claim.
11. However, the application in terms of Rule 103 is made outwith the time period stated in regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and it would not be appropriate to accept an application that has been clearly made out of time. The application is thus 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 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 McFatridge
Legal Member
2 February 2021