



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

3C Ronald Place, Stirling ("the Property")

Case Reference: FTS/HPC/PR/22/3641

Claire Martin, 27C Wallace Street, Stirling ("the Applicant")

Svetlana Emelianova, 12 Wensley Close, Harpenden ("the Respondent")

1. On 4 October 2022, the Applicant submitted an application to the Tribunal seeking an order in terms of Rule 103 of the Procedure Rules and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant stated that she was seeking an order against the Respondent for failure to lodge her deposit in an approved scheme. The Applicant submitted a copy of the tenancy agreement, emails from the three tenancy deposit schemes and evidence of her current address, which included a lodger agreement with a start date of 3 July 2022.
2. The Tribunal issued a request for further information. The Applicant was notified that an application under the 2011 Regulations could only be made against a landlord, not a letting agent. As the tenancy agreement, the Scottish Register of Landlords and the Land Register of Scotland all indicated that the owner and Landlord was Sasha Emelianova, and that the named Respondent was her agent, the Applicant was asked if she wished to amend the application

to reflect this. The Applicant was also asked to confirm the date on which the tenancy ended, and to provide evidence of this. In her response, the Applicant stated that the tenancy ended on 9 July 2022. She also confirmed that the application was to proceed against the named Respondent because she believed the owner and landlord to be mentally ill and all her dealings had been with the Respondent. She stated that the application should only be amended to name the Respondent as the letting agent, not the landlord. A further request for information was issued, again noting that the application had to be made against the landlord of the property but also pointing out that it may be too late to amend the application, given the end date of the tenancy. A further response was submitted which again confirmed that the application was to proceed against the Respondent.

DECISION

3. The Legal Member considered the application in 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 and documents lodged in support of same the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the 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 LR9. He indicated at page 16 of the judgment; "*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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. Regulation 3 of the 2011 Regulations states - "(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." Regulation 9 of the 2011 Regulations states – "(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 in respect of that tenancy deposit." Regulation 10 states that if the Tribunal is satisfied that a landlord did not comply with any duty in regulation 3 the Tribunal "(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit".
7. An application under the 2011 Regulations is only competent if it is made against a landlord, as the regulations only apply to landlords and not to letting

agents who manage property on behalf of a landlord. As the application specifies the letting agent for the property as Respondent, the application is incompetent. The Applicant was offered the opportunity to amend the application and declined to do so.

8. The Legal Member also notes that the Applicant failed to provide details or evidence of the date on which the tenancy ended when the application was submitted on 4 October 2022. This information was not provided until 17 October 2022. In terms of Rule 5 of the Tribunal Procedure Rules, an application is “made” only when “the mandatory requirements for lodgement have been met”. Rule 103 stipulates that evidence of the end date of the tenancy must be submitted with the application. In terms of Regulation 9 of the 2011 Regulations, an application must be “made” no later than 3 months after the tenancy has ended. As the evidence regarding the end date of the tenancy was not provided until after the three-month time limit had passed, the application was not “made” within the time limit.
9. As the application is incompetent, and as it was “made” outwith the three month time limit specified in the 2011 Regulations, the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.

J Bonnar

Josephine Bonnar
Legal Member
10 November 2022