



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER
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

37 Orchard Street, Aberdeen, AB24 3DA

Case Reference: FTS/HPC/PR/21/1624

Connor Johnson Goodier and India Robson ("**the Applicants**")

John Fotheringham ("**the Respondent**")

1. On 28th May 2022 an application which was dated 27th May was received by the Tribunal by email. The application was made under Rule 103 of the Rules of Procedure and was an application for an order for payment in respect of the Respondent's failure to carry out his duties in relation to the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The Tribunal considered that the application was lacking in form and also with regard to necessary documentation. On 6th June 2022, the Applicants were asked to provide information with regard to the end date of the tenancy, a copy of the tenancy agreement, information with regard to whether or not there is additional applicant, clarification with regard to the identity and address of the Respondent and evidence of payment of the tenancy deposit, if available.
3. A reminder was sent to the Applicant on 27th June 2022 and, in that letter, the Tribunal advised that an application under Rule 103 is not considered "made"

until applicants have dealt with all outstanding enquiries of the Tribunal and it has been accepted for determination. In response, the Applicants provided information on 8th July 2022 and, *inter alia*, stated that the tenancy had ended on 28th February 2022.

B DECISION

1. 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."

- 2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

103. Where a tenant or former tenant makes an application under regulation 9 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.

Requirements for making an application

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.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(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.

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

(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.

(2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.”

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 provides that certain information which requires to accompany an application. The Applicants did not provide the information when the application was submitted and provided it on 8th July 2022.
2. The email of the applicants dated 8th July stated that the tenancy was terminated on 28th February 2022.
3. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(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. (2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.” Regulation 10 then states: “If satisfied that the landlord did not comply with any duty in regulation 3 the First-tier Tribunal (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit...”
4. If the tenancy ended on 28th February 2022 the application would have to have been made on 28th May 2022 to be a valid application.
5. The application form was submitted by email of 28th May 2022 but at that point was clearly incomplete and the missing necessary information was not provided by the Applicants until 8th July 2022.
6. In terms of Rule 5 (3) of the Procedural Rules “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.” In terms of Rule 5 (3) of the Procedural Rules the necessary information was not received until 8th July 2022.

7. It would not be appropriate for the Tribunal to accept an application which is made out with the 3 months' time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
8. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: "*[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 UT60 [2019] Sheriff Di Emidio states at paragraph 14: "*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.*"
9. The original application, whilst made just within the 3 months period, was incomplete. The required information was provided after the period of 3 months had expired and thus the application, which in terms of Rule 5 (3) is considered to be made when the application documents are finally complete, has to be rejected as having been made after the period stated in Regulation 9 expired.

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.



Martin J. McAllister
Legal Member
12th July 2022