



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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 Rules")

in connection with

24 West Relugas Road, Edinburgh EH9 2PL

Case Reference: FTS/HPC/PR/20/2532

SANNA WAERN ("the Applicant")

KISHWAR YUSAF ("the Respondent")

1. An application dated 2nd December 2020 was received from the Applicant. The application was made under Rule 103 of the Rules being an application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits. The following documents were enclosed with the application:-
 - (a) Copy lodger agreement;
 - (b) Copy text messages between the Applicant and the Respondent;
 - (c) Copy bank statements.

DECISION

2. I 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."

3. After consideration of the application, the attachments and correspondence from the Applicant, 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 Rules.

REASONS FOR DECISION

4. '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. 9. 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.

5. The agreement between the parties is a lodger agreement. In response to a further information request from the Tribunal dated 23rd December 2020, the Applicant responded confirming that the Respondent was her landlady, and that the Respondent resided in the Property with the Applicant and a number of other lodgers.

6. Regulation 9 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* as amended confers jurisdiction upon the Tribunal in respect of an application by a tenant where the landlord did not comply with any duty in regulation 3 in respect of the tenancy deposit. Regulation 3 applies to a landlord who has received a tenancy deposit in connection with a relevant tenancy, which is defined as meaning any tenancy or occupancy agreement where the landlord is a relevant person, the house is occupied by an unconnected person, and the use of the house is not of a type described in section 83(6) of the *Antisocial Behaviour etc. (Scotland) Act 2004*. Section 83(6)(e) describes a house which is the only or main residence of the relevant person (i.e the landlord).

7. That being so, as the Property is the main residence of the Respondent, the provisions of the *Tenancy Deposit Schemes (Scotland) Regulations 2011* do not apply to the Respondent, and accordingly the Applicant has no legal entitlement to rely on them.

8. For the above reason, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

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.

Neil Kinnear

Neil Kinnear
Legal Member
14th January 2021