

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/22/0674

Parties

Mr George Dehaney (Applicant)

Mr Alan Taylor (Respondent)

25 Hillside Crescent, Edinburgh, EH7 5EB (House)

1. On 8 March 2022, an application was submitted by the Applicant. The application was dated 6 March 2022. 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. The application however sought repayment of the deposit and the one month’s rent.
2. Supporting documentation accompanied the application namely bank statements, proof of end and proof of beginning of tenancy.
3. On 9 March 2022 a further information request was sent to the applicant seeking the following information/clarification:-
 1. Advising that Rule 103 applications relate to failure by the landlord to lodge a tenancy deposit in an approved tenancy deposit scheme; and not the return of outstanding deposits or other payments.
 2. That as the applicant appeared to live at the same address as the landlord the tribunal may not have jurisdiction to hear this claim.

3. That it appeared that a rule 103 claim may be out of time (being made outside of the 3 months of the end date of the tenancy period).
4. By email of 21 March 2022 the Applicant emailed the Tribunal providing the same information already submitted and a covering email giving information about his occupancy in the subjects. It is noted that his occupancy appeared to be to rent a room in a house that the landlord also lived in; that the applicant had only resided there for 6 days; that he had left on 1 December 2021; that he had paid £500 (presumed to be for the first month's rent) and a deposit of £250; and that a further £500 had left his bank account at the end of December 2021 and been paid to the landlord. That the landlord had kept both months' rent and the deposit. The applicant appeared to be seeking repayment of the deposit and the second £500 that had been paid to the landlord. It is also noted that the landlord did not appear to have provided any occupancy agreement to the applicant.

DECISION

5. 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.”

6. 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

7. “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.

8. 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.

9. 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 set out the name and address of the 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; and evidence of the date of the end of the tenancy.
10. 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.

11. 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. In this case the application appears to have been made on a date later than 3 months after the occupancy ended; given that the applicant left the property occupancy on 1 December 2021 (as evidenced by his supporting documentation) and the application being received by the Tribunal on 8 March 2022. In terms of rule 5 the application had not therefore been made within the 3 month period.
12. In addition it also appears that the Tenancy Deposit Schemes (Scotland) Regulations 2011 do not apply to the applicant's occupancy of the subjects. The type of tenancy that the applicant had does not appear to have been a "*relevant tenancy*" in terms of regulation 3(3) of the Tenancy Deposit Regulations, and so those regulations would not apply to his case. As tenancies where the house is the only or main residence of the relevant person [the landlord] (as defined in the Anti-Social Behaviour (etc) Scotland Act 2004 section 83 (6)) are not covered by the Tenancy Deposit regulations.
13. The the requirements of the regulations have not been met in this case. Accordingly, I do not consider that the First-Tier Tribunal could competently entertain this application. 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.
14. The Tribunal would however observe, that there are a number of other matters which the applicant should consider if making any further application, these include:- that it appears that he was in fact seeking a payment order for repayment of his deposit and rent, this is therefore a different type of application (namely a payment order); and as he appears to have been a lodger living with a resident landlord, then the Tribunal may not have jurisdiction to consider his claim at all. Any claim he wished to make, may have to be made to the sheriff court by using the Simple Procedure. The applicant may have the right to seek recovery of these payments, however he needs to consider, and perhaps, take advice on who has jurisdiction to hear his claim.

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. B

22/03/2022

Legal Member/Chair

Date