



**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

89 Carlton Court, Aberdeen, AB10 1TF (the property)

Case reference FTS/HPC/PR/22/0954

Parties

Miss Claire Milne (Applicant)

Mr Ashley Johnston (Respondent)

1. On 4 April 2022 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application by the Applicant. The application was made under Rule 103 of the Rules of Procedure. In the application the Applicant asks for return of a holding deposit paid for a property she did then not move into. She submitted evidence of payment of a deposit and receipt of the funds of £525. She gave no further details about the nature of the negotiations between her and the landlord. On 5 April 2022 the Applicant added an email stating that her deposit had not been lodged by the landlord and he was not returning it to her.

2. On 6 April 2022 the FTT wrote to the Applicant: *“Before a decision can be made, we need you to provide us with the following: • You have raised the application under Rule 103 which is the rule where a tenant makes an application in respect of the Tenancy Deposit Schemes (Scotland) Regulations 2011, where the tenancy deposit has not been lodged with an approved tenancy deposit scheme within 30 days of the tenancy commencing. In this case the tenancy did not commence, therefore there can be no breach of the Regulations. Rule 103 is, therefore, not the appropriate rule under which to raise this application. • Rule 111 allows the Tribunal to consider civil proceedings arising from a private residential tenancy, and that would normally be the correct rule where a former tenant is reclaiming a deposit that has not been lodged with a tenancy deposit scheme. However, in this case, no tenancy agreement was entered into, therefore the matter has not arisen from a private residential tenancy and it would seem that the Tribunal may not have jurisdiction in this case. You may wish to take advice from a solicitor or suitable advice agency such as Shelter Scotland or the Citizens Advice Bureau before making written representations as to why you believe the Tribunal has jurisdiction.”*
3. In answer to this the Applicant produced a letter from Shelter Scotland (undated) on 12 April 2022 which she stated had been sent by Shelter Scotland to the landlord and which included the statement: *“It is therefore requested that Miss Milne’s deposit of £525 is returned to her. Miss Milne has been advised If funds are not returned, she would have a strong case through simple procedure action at Civil Court.”* The Applicant asked the FTT to help her recover her money.
4. On 25 April 2022 the FTT again wrote to the Applicant stating *“• We acknowledge receipt of your email dated 12 April 2022 together with the copy of the undated letter that Shelter Scotland appear to have sent on your behalf to Mr. Johnston. • Your email of 12 April does not directly address the issues raised in the Tribunal’s previous request for further information. • We note that the letter from Shelter Scotland indicates to Mr. Johnston that if the funds, which were paid to him, are not returned that you would have a strong case through simple procedure action at the sheriff court. It would appear that Shelter Scotland have indicated to you that the appropriate forum to seek to recover the money which you paid to Mr. Johnson is the sheriff court. • Can you please therefore respond fully to the tribunal’s original letter of 6 April setting out*

- the reason why you believe this tribunal has jurisdiction to deal with your application.”*
5. In reply the Applicant wrote to the FTT on 29 April 2022 stating *“I fully understand the fact the First Tier Tribunal has no jurisdiction as a tenancy didn't take place but I feel failed by the system.”* She then goes on to say that the landlord knew *“by not starting the tenancy and keeping my deposit I would need to go through the stress of a simple procedure, taking time and costing money”* and that she wants the FTT to deal with the matter. At the end of the email the Applicant again acknowledges *“I said at the start of this email I am aware you do not have jurisdiction but I beg of you to help me.”*
 6. All documents are referred to for their terms and held to be incorporated herein.

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 (**[F65**First-tier Tribunal orders]) 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

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

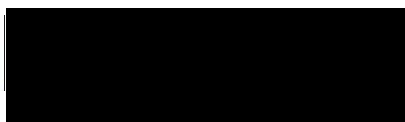
1. The Applicant stated clearly that the payment was for a holding deposit and that ultimately she never moved into the property and there was not tenancy. The Application is made under Rule 103 of the Procedural Rules and Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Both provisions clearly state that such an application has to be made by a tenant or former tenant. The Applicant is not a tenant or former tenant of the property and thus is not a qualifying person to make the application. Shelter Scotland, her own advisors, had directed her towards the civil court and not to the FTT.
2. Furthermore, the Applicant wishes to have the funds she paid returned to her. Rule 103 is not a process which can create that outcome. It is a process which may result in a payment order for non compliance of a Respondent with the obligations arising from the Tenancy Deposit Schemes (Scotland) Regulations 2011.
3. It is not competent or appropriate for the FTT to deal with an application which is not made by a qualifying person for that type of application. The application is not competently made because the Applicant is neither a tenant nor a former tenant for the property. The application thus has to be 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 McFatrige

Legal Member

5 May 2022