



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER  
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE  
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

**6 Burnside Crescent, Polbeth, EH55 8SY Property**

Case reference FTS/HPC/PR/21/2800

**Parties**

**Mr Craig McNab (Applicant)**

**Mr Colin Bird, Mrs Catherine Bird (Respondent)**

1. On 10<sup>th</sup> November 2021, an application was received from the Applicant. The application was made under Rule 103 of the Procedural Rules, being an application for an order for a penalty for not lodging a tenancy deposit in a tenancy deposit scheme. The Applicant advised the tenancy had ended on 29<sup>th</sup> October 2021.
2. The Tribunal requested further information from the applicant by letter dated 18<sup>th</sup> November 2021. The Tribunal asked for the following information:-  
*I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:*
  1. *Please provide a copy of the whole tenancy agreement.*

*2. If there is a joint tenant please advise if they should be added to the application, and provide contact details. If not please provide written authority for the application to proceed in the sole name of the Applicant.*

*3. The address you have provided for the Respondent appears to be the same as the letting agent. Please clarify the position as an actual address is required. The letting agent or landlord registration may be able to provide this. If you cannot provide an address, you will have to apply for service by advertisement using the address on the Tribunal website. This should be submitted with evidence of attempts to obtain an address, such as a trace report from a Sheriff Officer. You are reminded that an application under Rule 103 must be lodged with all required information and documents no later than 3 months after the tenancy has ended. Please reply to this office with the necessary information by 2 December 2021. If we do not hear from you within this time, the President may decide to reject the application”*

3. The Applicant did not respond and the Tribunal wrote again requesting this information on 16<sup>th</sup> December 2021 and 6<sup>th</sup> January 2022.
4. The Applicant did not respond to either of those reminders and so the Tribunal wrote again on 25<sup>th</sup> January and asked “I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: **You have failed to respond to three requests for further information. Based on the information provided it appears that the application may be time barred if you do not provide the missing information by 29 January 2022 as an application is not made until all information required in terms of the rules has been provided.** If you fail to respond by 29 January 2022 the application is likely to be rejected. Please reply to this office with the necessary information by 29 January 2022. If we do not hear from you within this time, the President may decide to reject the application
5. The Applicant has not responded to the Tribunal.

## **DECISION**

6. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

7. *"Rejection of application*

*Rule 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

*(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

*(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.*

*(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.*

*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."*

8. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

## **REASONS FOR DECISION**

9. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. '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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

10. The applicant has failed to respond to the Tribunal's request for further information and documents, in breach of Rule 5 and as a result mandatory information namely an address for the Respondent and a copy of the full tenancy agreement or full details of the tenancy have not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
11. In addition to the failure to respond the application is now time barred as the application has not been made in full before the end of three months from the end of the tenancy so the application could now not be accepted.
12. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

### **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.



Jan Todd  
Legal Member  
2<sup>nd</sup> February 2022