

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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

**3/1, 56 Dixon Road, Glasgow, G42 8AX ("the property")**

Case reference FTS/HPC/PR/21/1250

**Parties**

**Mr Fraser Gordon, Mx Naelle Zayani (Applicants)**

**1st Lets (Glasgow) Ltd (Respondent)**

**A BACKGROUND**

1. On 25 May 2021 the Applicants lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 103 of the Procedural Rules regarding the property. The application was directed against 1st Lets (Glasgow) Ltd. The application stated that the tenancy ended on 27 February 2021. No tenancy agreement was provided with the application although various documents were submitted and the tenancy agreement was listed as one of the documents supplied.
2. On 10 June 2021 the Tribunal wrote to the Applicants: "With regard to the

application made to the tribunal on 25 May 2021 we note that it is not clear from the documents submitted whether the application was made against a letting agent or against the landlord. An application under Rule 103 can ONLY be made against the landlord of the property, not against a letting agent. No copy of the tenancy agreement was provided. Please now provide a copy of the tenancy agreement so the Tribunal can then determine whether the application was competently made against the correct respondent within the 3 months time limit from the end of the tenancy stated in The Tenancy Deposit Schemes (Scotland) Regulations 2011 Regulation 9 (2)."

3. No reply was received.
4. On 15 July 2021 the FTT sent a further email to the Applicants requesting the information.
5. On 15 July 2021 the following answer was received: "We had applied with the intent to challenge the letting agency as it was their responsibility to secure our tenancy deposit in a deposit scheme, and it was them that failed to do so. There was no clear indication on your website that this claim could only be made against the landlord, who was supposedly unaware of the situation, so could I ask that you advise me of the correct way to make this claim against the letting agency? I am aware that we are now past three months after leaving that tenancy - is it still possible to proceed? Please find attached the tenancy agreement"
6. The tenancy agreement was attached to the email and showed that whilst 1st Lets (Glasgow) Ltd were stated as the Letting Agent, the landlord was clearly stated to be "Mr J and Mrs C McKinney".

## **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

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. ....

## **D REASONS FOR DECISION**

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (b) and (c) of the Procedural Rules states that such an application must be accompanied by a copy of the tenancy agreement.
2. The application information states that the tenancy ended on 27<sup>th</sup> February 2021.
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 27 February 2021 the application would have to have been made on 27 May 2021 to be a valid application.
5. The application form was submitted by email of 25 May 2021. Because the tenancy agreement was listed as an attachment in the application the FTT gave the Applicants the opportunity to submit the relevant documentation, in particular to establish whether the application was directed at the correct Respondent. The FTT had already made it clear to the Applicants that an application could only be directed against a landlord and only within the relevant time period.

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 this case the tenancy agreement was submitted on 15 July 2021 and disclosed that the application was made against the letting agent, not the landlord. Unfortunately for the Applicant, in terms of Rule 5 (3) of the Procedural Rules by then it was too late to make a valid application to the FTT under Rule 103 because of the clear definition of the date when the application is made as stated in Rule 5 (3) and of the time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
7. It would not be appropriate for the Tribunal to accept an application has been made out of time and it would not be possible for the FTT to accept an application which was not competently made because it was directed at the wrong Respondent. The application is thus 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.**

**P. H**

Petra Hennig McFatridge

Legal Member

28 July 2021