

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”)

Chamber Ref: FTS/HPC/PR/18/2871

Re: Property at 141 West Turbain, Kirkcaldy, Fife, KY2 6QF (“the Property”)

Parties:

Miss Claire Gerrard (“the Applicant”)

Miss Tracy Harrison (“the Respondent”)

1. On 23 October 2018, an application was received from the Applicant. The application was made under Rule 103 of the Chamber Procedural Rules being an application for an order for payment where landlord has not paid the deposit into an approved scheme.
2. On 14 December 2018, 5 February 2019 and 6 March 2019 the Applicant was requested to provide clarification about the application which she wished to bring (to advise whether it should be brought under rule 70 having regard to the terms of the order which the applicant stated she was seeking in the application); to confirm the end date of the tenancy; and to confirm who the respondents were. The correspondence from the tribunal office advised that this information should be provided by 28 December 2018 and 19 February 2019 respectively and the final email of 6 March 2019 requesting that the information be provided within 7 days, failing which the President may decide to reject the application.
3. There has been no response from the Applicant to any of these written requests for further information.

DECISION

4. 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.”

5. 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 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

6. The Tenancy Deposit Schemes (Scotland) Regulations 2011 provide that:-

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and*
- (b) provide the tenant with the information required under regulation 42. ...*

9.—(1) *A tenant who has paid a tenancy deposit may apply to the sheriff 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.*

10. *If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—*

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

7. One of the requirements therefore of the regulations is that any application to the tribunal for an order that the landlord did not comply with its duty under regulation 3, must be made no later than 3 months after the tenancy has ended. In the present case the Applicant has not provided any information and evidence as to the date on which the tenancy ended despite being requested to provide this information on three occasions by the Tribunal.
8. The applicant also failed to clarify the order she is in fact seeking and whether in fact rule 70 applies and not rule 103, as her application form states that she "*I wish for my deposit to be returned to me-£450.*"
9. I consider that the Applicant's failure to provide evidence to support the application and clarify the order she in fact seeks, as requested by the Tribunal, gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unable to do so in order to progress this application.
10. 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 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 Barbour

Legal Member/Chair

25.3.19

Date