



**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

16 Hill View Lodges, Rumbling Bridge, Kinross KY13 0QT

Case Reference: FTS/HPC/PR/20/1670

Briony Multon ("the applicant")

SF Property Company Ltd Steven Farish ("the respondent")

Background:

1. On 7 August 2020 the applicant lodged an application in terms of Rule 78 of the Procedural Rules with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal).
2. In part 7 c the applicant states that she is seeking an order for "Return of deposit and any compensation the tribunal sees fit to grant"
3. Part 8 of the Application states that lodged with the application are a copy of the lease, printout texts between landlord and tenant and statement from tenant setting out background to the claim.
1. The Tribunal advised the applicant by letters of 1 September 2020 and 30 September 2020 in the following terms: *"Your Application has been considered by a legal member of the tribunal and an amended application and further information is required from you before it can be considered further. Your Application is made under the wrong rule (78 – an application for compensation for misrepresentation or concealment by landlord) and your Application appears to contain two separate claims: a claim under Rule 103 the landlord's alleged failure to lodge your deposit in a deposit protection scheme and a claim against the landlord and/or his letting agent for return of your deposit, which would proceed under Rule 70 (an application for civil proceedings relating to an*

assured tenancy under the 1988 Act) or Rule 111 (a civil claim in relation to a private residential tenancy). An application in terms of Rule 103 cannot proceed as it is out of the time period for making such an application because it was made more than three months after the end of the tenancy. You have stated that the tenancy ended at the end of February 2020. Your Application was made on 3 August 2020. Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations provides: "(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]¹ 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 [...]2 no later than 3 months after the tenancy has ended." You have also stated in your Application that the tenancy commenced on 1 September 2018 and that the Landlord issued you with the wrong kind of tenancy agreement. Having regard to the above: 1. Please confirm whether you wish to amend your Application to proceed under Rule 70 or Rule 111, to claim for return of the deposit which was paid to the Respondent; and if so, submit an amended Application Form 2 which is made under Rule 70 or Rule 111 with Section 7(b) completed with details of the claim and 7(c) amended to reflect the amount you are claiming in respect of return of the deposit; 2. Please provide documentary evidence in support of your claim as required by Rule 70/111, including: a. a copy of the signed tenancy agreement; b. proof of the payment of the deposit to the landlord; and c. any other documentary evidence upon which you wish to rely. You may wish to obtain legal advice or housing advice before responding. Please provide the amended application and further information no later than [14 days]. If you do not do so your Application may be refused. "In the second request for further information on 30 September 2020, which attached a copy of the request for further information of 1 September 2020, the applicant was given 14 days for a reply and again advised that if this is not received the application may well be rejected.

2. The applicant did not have the courtesy to either reply to the Tribunal with the information requested or to withdraw the application.
3. No answer was received and no further documentation submitted.

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.

Relevant Legislation

Rule 78 of the Procedural Rules:

Application for compensation for misrepresentation or concealment by landlord

78. Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

(a) state—

(i) the name and address of the former tenant;

(ii) the name, address and profession of any representative of the former tenant; and

(iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by—

(i) evidence of misrepresentation on the part of the landlord; and

(ii) a copy of the order for possession; and

(c) be signed and dated by the former tenant or a representative of the former tenant.

REASONS FOR DECISION

1. The Tribunal can only accept an application under rule 78 of the Procedural Rules if the application is made in respect of an order for possession granted for a tenancy under the

Rent (Scotland) Act 1984.

2. The lodging requirements include in Rule 78 (b) (ii) a copy of such an order for possession.
3. The lodging requirements for an application under Rule 78 are not met.
4. The applicant was advised of this and was twice given the opportunity to amend the application or to lodge an application under an appropriate rule depending on the type of tenancy entered into if she wished to lodge an application for return of the deposit, which is one claim referred to in the application.
5. The applicant was advised that any claim for non compliance with the Tenancy Deposit Schemes Regulations 2011 would be out of time as these claims can only be raised within 3 months of the end of the tenancy. The application was made in August 2020 and the information in the claim is that the tenancy ended at the latest on 1 March 2020.
6. Furthermore the applicant had been advised what documents are required to lodge an application for payment e.g. for the return of the deposit under the Rules of Procedure and to amend the application accordingly or to lodge a fresh application. She did not do so.
7. Based on the available information the application does not conform to the requirements for an application under Rule 78 of the Procedural Rules. No amendment request has been sent. It would not be appropriate for the Tribunal to accept an application that does not meet the lodging requirements for the rule under which it was made. The application it is therefore 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

Legal Member
20 October 2020