



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.**

In respect of application by Mr Murdo MacLeod in terms of rule 103 of the Rules.

**Case reference FTS/HPC/PR/19/2119.**

At Glasgow on the 24 July 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules.

1. This is an application by Mr Murdo MacLeod , the former tenant of the 23/8 Union Place, Flat 3/3 Edinburgh EH1 3NQ ‘the property’ in connection with their former landlord’s alleged failure to lodge the deposit into an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011, ‘the regulations’.
2. The application was made on the applicant’s behalf by Community Help and Advice Initiative, ‘CHAI’. The application was dated 3 July 2019 and was received by the Tribunal on 8 July 2019.
3. The application was accompanied by the following copy documents:
  - (a) Bank statements
  - (b) Notice of the date of removal dated 13 February 2019.
  - (c) Copy emails regarding the removal date sent to Aberdeen Consedine and David Rosso of Private Rented Services.
  - (d) Whatsapp messages sent to landlord.
4. The application stated that the applicant rented the property from 3 July 2018 until the ‘end of February 2019 ‘when the property was repossessed by the heritable creditor.

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5. Regulation 9 provides:

- (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 ended.

6. The application refers to the tenancy coming to an end at the end of February 2019. The exact date is not given but the applicant states in his application that he rented the property up until the end of February 2019. The documentation lodged at item (a) above states that "the sheriff officers will attend on 26 February 2019 to execute a decree for removing from heritable property". This application was not made until it was received by the tribunal on 8 July 2019. In my view this application is therefore time barred. If the tenancy came to an end at the end of February 2019 it should have been made within 3 months of that, ie by the end of May 2019.
7. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if ***"they consider that an application is vexatious or frivolous"***.
8. "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".
9. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it has not been made in accordance with the requirements of regulation 9 of the regulations.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

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An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

L.Ward

Legal Member

