

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

30/1 Sloan Street, Edinburgh, EH6 8PH ("the property")

Case reference FTS/HPC/PR/21/1291

Miss Kaja Guzinska (Applicant)

UNKNOWN UNKNOWN (Respondent)

A BACKGROUND

1. On 31 May 2021 the Applicant 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 details of the Respondent on the application were left blank. The notice accompanying the application showed that the tenancy ended on 2 April 2021. No tenancy agreement was provided with the application and the Applicant did not provide the details of the Respondent or proof of payment of the deposit and proof of the deposit not having been lodged.
2. On 15 June 2021 the Tribunal wrote to the Applicants: *"Thank you for your application in order for us to process this we do require a name and address of the Respondent/Landlord. Can you please supply a name and address? If you don't have*

an address but can supply the name then you can apply to serve this by advertisement by filling in the application you will find on our website. Alternatively you can contact the landlord registration team of the local authority who may be able to provide a name. You have advised you do not have a tenancy agreement but can you provide details of the agreement you had namely the names of the tenants, name of the landlord, date of commencement and end date, rent payable. Please provide evidence of the deposit that was paid. If there were other tenants please advise if they wish to join in this application or not? "

3. No reply was received.
4. On 9 July 2021 the FTT sent a further email to the Applicants requesting the information.
5. On 16 July 2021 the following answer was received: *"Please forgive the late reply, I requested my bank statement from 2014 but because this data has been archived it took m bank quite a long time. I already gave up but it came in the post today. Please find the copy of my bank statement in the attachment. I have highlighted the transaction in green. I will inquire further with my bank why there is no contact details next to such important money transfer. I sincerely apologise if this evidence is not sufficient but I hope at least it'll be enough to not reject my application. Please understand that I just received the post despite promise from my bank I should be receiving the statement previous week."*
6. An unredacted bank statement was attached confirming a transaction of £650 on 3 May 2014. No landlord details and no further information regarding the tenancy was provided.

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 (a) (iii) of the Procedural Rules states that such an application must state the name, address and registration number (if any) of the landlord. There was no information provided in the application or the notice attached to it which disclosed the landlord details. An application of this nature can only be directed against a landlord and thus has to provide the name and address of the landlord.
2. The Applicant states that the tenancy ended on 2 April 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 2 April 2021 the application would have to have been made on 2 July 2021 to be a valid application.
5. The application form was submitted by email of 31 May 2021. The FTT wrote to the Applicant advising of the time limit and asking for the information about the landlord and the tenancy agreement, which is necessary to lodge a complete and valid

application. This information, despite having been requested twice by the FTT, has still not been provided.

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 terms of Rule 5 (3) of the Procedural Rules it is now 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 which is incomplete or to wait for further information as the application would now be made out with the statutory time period stated in the Regulations. 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.

Petra Hennig McFatridge

Legal Member

30 July 2021