



**DECISION AND STATEMENT OF REASONS OF JAN TODD, 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

Case reference FTS/HPC/PR/22/3481

Apartment 13B, Main Street, Kilsyth, Glasgow, G65 0AH (House)

Parties

Mr Connor Ronan (Applicant)

Mitchells Sales and Lettings (Respondent)

1. On 22nd September 2022, an application was received from the Applicant. The application was made under Rule 103 of the Procedural Rules, being an application for an order for a penalty for not lodging a tenancy deposit in a tenancy deposit scheme. The Applicant advised the tenancy had ended on 10th June 2022
2. The Tribunal requested further information from the applicant by letter dated 28th September 2022. The Tribunal asked for the following information:-

I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: 1. "The application was received on 22 September 2022. You have indicated that the tenancy ended on 10 June 2022. An application under Rule 103 must be lodged with the Tribunal no later than 3 months after the tenancy ended. The Tribunal has no discretion to extend this time limit. Please explain the basis upon which the Tribunal can entertain the

application. 2. If you are seeking repayment of the deposit an application under Rule 111 should be submitted. 3. Please note that you appear to have made the application against the letting agent. Applications under the tenancy deposit regulations and for repayment must be made against the landlord. The registered owner appears to be Mitchells Asset Management Ltd with the same address as the letting agent. Please reply to this office with the necessary information by 12 October 2022. If we do not hear from you within this time, the President may decide to reject the application."

3. The Applicant responded on 7th October 2022 saying "Good afternoon. Thank you for your correspondence. The documents were sent and expected to be delivered within the time frame, I haven't however, took in to account the Royal Mail strike. I have also submitted an application under Rule 111. The letting agency are the owners of the property. Please advise if any more information is needed."
4. The Tribunal wrote again on 7th October 2021. "Before a decision can be made, we need you to provide us with the following:
Unfortunately, the Tribunal has no discretion over the time limit issue, and the application was received out with the three month period. Please confirm that you now wish to withdraw the Rule 103 application. Please reply to this office with the necessary information by 17 October 2022. If we do not hear from you within this time, the President may decide to reject the application."
5. The Applicant responded once more saying ".Please can we be advised further on where we stand now? As we are still owed a substantial amount of money. We have sent the documents in due time however we have struggled with contacting the estate agents themselves? Surely it is not lawful for the agents to get away with this."
6. The Applicants have not withdrawn their application.

DECISION

7. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-
8. "Rejection of application

Rule 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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."

REASONS FOR DECISION

9. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. '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". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
10. 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 Rule 8(1) (c) of the Procedural Rules. The application has been made under Rule 103 which is for a penalty for failure to lodge a tenancy deposit in an approved scheme. The time limit for

lodging such an application is strict and is 3 months from the end of the tenancy. The Applicants application was received by the Tribunal on 22nd September 2022 which is out with the time for lodging. It is the responsibility of the Applicant to lodge the application and all relevant documentation timeously. There is no discretion on the Tribunal to allow this application to be received late. There is no prospect of this application being successful and therefor it must be rejected.

11. 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.

12. The Applicant could make a claim for the return of the deposit if that is appropriate.

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.

Jan Todd
Legal Member
25th October 2022