

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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

**Case reference:** FTS/HPC/PR/22/1870

**3 Gryffe Castle, Kilmacolm Road, Bridge of Weir, PA11 3PU (the property)**

**Parties**

**Ms Samantha Davies (Applicant)**

**Kilglen Residential and Commercial Lettings (Respondent)**

1. On 15 June 2022 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application from the Applicant. The application was made under Rule 103 of the Rules of Procedure. The application was directed against the Letting Agent Kilglen Residential and Commercial Lettings. The Applicant provided a copy of the tenancy agreement and an email exchange showing the end date of the tenancy as 2 June 2022
2. On 21 June 2022 the FTT wrote to the Applicant: “Your tenancy agreement shows the landlord’s name as David Aiston. In your application you indicate the identity of the respondent as Kilglen Residential and Commercial Lettings. Can you please provide an explanation for the different identities. It would also be helpful if you can provide to the tribunal evidence of the date of lodging of the deposit with Safe Deposit Scotland and evidence of the date of payment

of the deposit”

3. On 22 June 2022 the Applicant replied: “The property and deposit was managed by Kilglen who are the estate agents and David Alston is the landlord so the fault lies with the estate agent, however if it has to be the landlord then it can. In what format do you require the proof of the payment and deposit dates”
4. On 1 July 2022 the FTT wrote again to the Applicant in the following terms: “In order for the Tribunal to be able to process your application further please provide the undernoted information/documentation: 1. Please provide a copy of the correspondence showing when the deposit was lodged with a registered scheme if you have such documentation e.g. the email/letter from the registered scheme with the DAN number and relevant dates. 2. Please provide evidence of when the deposit was paid e.g. in the form of a redacted bank statement showing the transfer, a receipt or other communication confirming the payment date. If this is not available please state when and how the deposit was paid. 3. An application under Rule 103 can only be made against the LANDLORD and not against a letting agent. You have made the application against the letting agent. At present the application is not competent because it is made against the wrong Respondent. If you wish to pursue the application you must amend the application to show the landlord as the respondent and you must provide not just the name of the landlord but also his/her actual address (a care of address will not be acceptable). You may be able to obtain the information from the tenancy agreement, the landlord register or the letting agent. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, otherwise the application will have to be rejected. “  
The Applicant was asked to provide this information by 15 July 2022.
5. There was no reply to this request for further information.
6. All documents are referred to for their terms and held to be incorporated herein.

## **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 ( 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. ....

#### Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

##### Court orders

10. 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; and
- (b) may, as the First-tier Tribunal 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.

#### **D REASONS FOR DECISION**

1. The Application is made under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Both provisions show that such an application has to be made by a tenant or former tenant against a landlord. The application was made against the Letting Agent. The application thus does not meet the

requirements of rule 103 (a) (iii) as it does not provide the landlord details. Regulation 10 only gives the FTT the power to make an order against a landlord. Thus an application against the Letting Agent cannot lead to a competent order under Regulation 10.

2. The Applicant was given the opportunity to consider the matter. She has not replied to the FTT's requests for further information despite the FTT having advised her of the possibility that the application may be rejected in those circumstances.
3. For the above reasons the application has not been competently made and thus it would not be appropriate for the FTT to accept it.

### **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.**

**P. H**

Petra Hennig McFatridge

Legal Member

29 July 2022