



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/RN/23/1604**

**Parties:**

**Ms Sophie Marshall ("the tenant ")**

**Unknown ("the landlord")**

**Clyde Property (Perth) ("the landlord's representative")**

**Property: House at 26C Gardner Street, Dundee DD3 6DT ("the Property")**

**Tribunal Member: Mrs A Devanny, Chamber President**

**DECISION**

The Tribunal rejects the application paperwork submitted by the tenant dated 12 May 2023 but not received by the Tribunal until 16 May 2023 as it is an incomplete prescribed property costs application made under Rule 115 of The First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedure Rules"). The rejection is made under Rule 8(1) (c) of the Procedure Rules.

**REASONS**

The tenant in this case is seeking to appeal under section 24G of the Housing (Scotland) Act 1988 or section 33C of the Private Housing (Tenancies) (Scotland) Act 2016.

Rule 115 of The First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedure Rules") states the mandatory information and

documents which must be submitted to constitute a Prescribed Property Costs Application. Rule 115 states

**“Form of a prescribed property costs application**

*115.—(1) Where a tenant or landlord makes a prescribed property costs application, the application must—*

*(a) state—*

*(i) the name and address of the applicant,*

*(ii) the registration number of the landlord (where it is known by the applicant),*

*(iii) the name, address and profession of any representative of the tenant or landlord,*

*(iv) the name and address of the other party to the tenancy, and*

*(b) where the application is made by the landlord, be accompanied by—*

*(i) a copy of the prescribed property costs order,*

*(ii) a copy of the application under section 24E(1) of the 1988 Act or, as the case may be, section 33A(1) of the 2016 Act,*

*(iii) a copy of the notice given by the landlord to the tenant under section 24E(3) of the 1988 Act or, as the case may be, section 33A(3) of the 2016 Act,*

*(c) where the application is made by the tenant, be accompanied by—*

*(i) a copy of the prescribed property costs order,*

*(ii) a copy of the notice given by the landlord to the tenant under section 24E(3) of the 1988 Act or, as the case may be, section 33A(3) of the 2016 Act, and*

*(d) be signed and dated by the applicant or a representative of the applicant.”*

The wording of this legislation states that the application paperwork must state certain information and be accompanied in the instance of a tenant’s application by two specified documents. There is no requirement for a tenant to submit the application on a specific application form.

In this case the tenant has provided application paperwork consisting of a letter from herself to the Tribunal and a communication from Rent Service Scotland to Clyde Property (Perth). The later communication to Clyde Property (Perth), which although it does not specifically state that it is a prescribe property costs order, may be intended to fulfil that purpose as it contains certain information and a decision on the landlord’s application for a prescribed property costs order and is issued by Rent Service Scotland, albeit the copy communication submitted to the Tribunal does not show a

signature. This communication from the Rent Service Scotland is dated 3 May 2023 which is taken to be the date of the order and when the decision was made. The communication includes the following sentence

“Please note that if you disagree with the rent that I have set you may appeal to the First-tier Tribunal within **14 days of the date of this letter.**”

It is assumed that the tenant has been issued with a private residential tenancy given that she refers to the tenancy being entered into last year. That being the case section 33C (2) of the Private Housing (Tenancies) (Scotland) Act 2016 applies. This provides with regard to appeals made under Rule 115 that a rent officer’s order made under section 33B(2) or (3) may not be appealed against more than 14 days after the order is made. A similar provision applies for assured and short assured tenancies under the Housing (Scotland) Act 1988.

The Rent Service Scotland refers to this time limit in their letter which is provided by the tenant with her application. The letter from Rent Service Scotland to the tenant is dated 3 May 2023 with the consequence that a valid application under Rule 115 must be submitted to the Tribunal by midnight on 17 May 2023.

I have considered both items received from the tenant on 16 May 2023 to consider whether taken together they meet the requirements of Rule 115. Whilst the tenant signs her letter and provides her name in that document and her address can be taken as the address shown as a heading in Rent Service Scotland’s letter addressed to Clyde Property (Perth), the landlord’s name and address is not obvious from the paperwork submitted. The letter from Rent Service Scotland dated 3 May 2023 is addressed to Clyde Property (Perth) but it is unclear if this is in their capacity as landlord or as landlord’s representative. While much of Part 1 of the Procedure Rules has been dis-applied for prescribed property costs applications by legislation, Rule 20(1) can still be applied by the Tribunal to make inquiries where these inquiries are for the purposes of exercising its functions, such as in this case considering if the application paperwork meets the requirements in Rule 115. A search inquiry of the landlord registration public website for the property postcode does not reveal Clyde Property (Perth) as a landlord for that property and another name is shown. Therefore, it can be assumed that Clyde Property (Perth) is not the landlord but the landlord’s representative. The paperwork, therefore, submitted by the tenant does not disclose the name and address of the landlord.

For a valid application two documents must be attached. Whilst the letter from the Rent Service Scotland may constitute a copy of the prescribed property costs order, there is no document which could constitute a copy of the notice given by the landlord to the

tenant under section 24E(3) of the 1988 Act or, as the case may be, section 33A(3) of the 2016 Act.

It is for a party to make their application and the Tribunal cannot ignore the absence of mandatory information which is required by the legislative rules. At this stage the Tribunal takes the application at its highest but it cannot be ignored that a prescribed document has not been provided and information which must be provided has been omitted. The application was incomplete when received by the Tribunal on 16 May 2023. The tenant has provided no contact details in her letter. Any communications to her will need to be via by post to the address in the heading of the Rent Service Scotland's letter as the property to which the landlord's application applies. The lack of a telephone number or email for the tenant has prevented the Tribunal seeking further information and the omitted document which would allow the application paperwork to meet the mandatory requirements by 17 May 2023. The powers of the Tribunal to seek this further information are contained in Rule 5(3) of the Procedure Rules.

As at this date, the application paperwork is incomplete for the reasons outlined and the deficiencies in the paperwork cannot be remedied as it is beyond the time limit set down in legislation. The Tribunal has no powers to extend or disregard a time limit set down in statute. The application is at the stage of being considered under Rules 5 and 8 of the Procedure Rules. The application is accordingly rejected in terms of rule 8 (1) (c) of the Procedure Rules which states

*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—.....*

*(c) they have good reason to believe that it would not be appropriate to accept the application.*

Rule 114 (11) to (13) of the Procedure Rules revokes the right to seek a permission to appeal or a review of decisions made in relation to Rule 115 applications. A review in terms of Rule 120 does not apply as no order has been made by the Tribunal in relation to a prescribed property costs application. Consequently, there is no appeal or review against this decision.

**A Devanny**

..Chamber President

Date: 19 May 2023