



**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

**6 James Street, Aberdeen, AB11 5AP ("the property")**

**Case reference** FTS/HPC/TE/21/0772

**Parties**

**Mr Edvard Kingissepp (Applicant)**

**Bowden Buildings Ltd (Respondent)**

**A BACKGROUND**

1. On 25 March 2021 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 107 of the Procedural Rules. The applicant indicated he was seeking an order under S 16 of the Private Housing (Tenancies) (Scotland) Act 2016 (Act) and attached to the application a copy of a notice form under S 17 of the Act to the landlord dated 24 March 2021, which referred to an application under S 16 (3) to be made on the basis that certain information had not been provided as required by S 11 of the Act. The information

stated in the notice related to information about tenancy deposit schemes. The notice is referred to for its terms.

2. On 13 April 2021 the FTT requested the further information:
  - ☐ Please provide evidence in support of your application such as proof of payment of rent and/or deposit.
  - ☐ Please confirm the date of commencement and termination of the tenancy.
3. The applicant sent further emails stating the tenancy commenced on 10 January 2021 and ended on 15 April 2021, although the applicant moved out on 22 March 2021. He stated the information he was seeking was not provided until 26 March 2021.
4. On 28 April 2021 the FTT wrote to the applicant stating: “You have indicated that the tenancy ended on 15 April 2021. An application under Rule 107 and Section 16 can only be made by a tenant during the course of the tenancy. Please clarify the basis upon which the Tribunal can entertain the application.”
5. He replied on the same day: “Also the landlord has failed to provide me with prescribed information. I have applied to the tribunal, but I used another rule, but the tenancy has ended. I want to get compensation from the landlord, because she breaks up with law, and hasn't sent me the prescribed information on time.”
6. The correspondence lodged in this case is referred to for its 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

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. ....

Application for payment order where landlord has failed to provide information

107. Where the tenant makes an application under section 16(1) (to sanction failure to provide information) of the 2016 Act, the application must—

(a) state—

(i) the name and address of the tenant;

(ii) the name, address and profession of any representative of the tenant;

(iii) the name, address and registration number (if any) of the landlord; and

(iv) that the landlord has failed to provide the tenant with (either or both)—

(aa) a document setting out all the terms of the tenancy required under section 10 F71;

(bb) information required under section 11, of the 2016 Act;

(b) be accompanied by a copy of the notice given to the landlord under section 16(3)(c) of the 2016 Act; and

(c) be signed and dated by the tenant or a representative of the tenant.

The Private Housing (Tenancies) (Scotland) Act 2016:

11 Duty to provide specified information

(1) The Scottish Ministers may by regulations impose a duty on any person who is, or is to be, the landlord under a private residential tenancy to provide the person who is, or is to be, the tenant—

(a) with information specified in the regulations,

(b) by a deadline specified in the regulations.

(2) The power to specify information under subsection (1)(a) includes the power to specify the form in which the information is to be provided.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.

(4) But subsection (3) does not apply in any case in which consultation has been carried out by the Scottish Ministers more generally, without specific reference to such tenants and landlords.

16 First-tier Tribunal's power to sanction failure to provide information

(1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where—

(a) the landlord has failed to perform a duty arising by virtue of section 10 or 11 to provide the tenant with information,

(b) at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and

(c) the landlord does not have a reasonable excuse for failing to perform the duty.

(2) An order under this subsection is one requiring the landlord to pay the person who made the application an amount not exceeding—

(a) three months' rent, if the order is in respect of a failure by the landlord to perform—

(i) a duty arising by virtue of section 10, or

(ii) one or more duties arising by virtue of section 11,

(b) six months' rent, if the order is in respect of a failure by the landlord to perform—

(i) a duty arising by virtue of section 10, and

(ii) one or more duties arising by virtue of section 11.

(3) An application under subsection (1)—

(a) may be made only during the course of the tenancy in question,

(b) where the application relates to a failure to perform a duty arising by virtue of section 10, may be made only as part of an application under section 14(1), and

(c) may not be made unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.

(4) If—

(a) an application has been made under subsection (1) in respect of a failure to perform a duty arising by virtue of section 11, and

(b)at the time the application was made, an application could have been made in respect of a failure to perform another duty arising by virtue of section 11,no application may be made in respect of that other duty. ....

17Meaning of notice period in sections 14 and 16

(1)For the purposes of sections 14(3) and 16(3)(c), a notice period—

(a)begins on the later of—

(i)the day that the landlord receives notice from the tenant of the tenant's intention to make the application in question, or

(ii)the day after the deadline by which the landlord should have performed the duty to which the application in question relates, and

(b)expires on the day falling 28 days after it begins.

(2)Where the application in question relates to a failure by the landlord to perform more than one duty, the reference to the duty in subsection (1)(a)(ii) is to be read as a reference to the duty with the latest deadline for performance.

(3)A notice of a tenant's intention to make an application under section 14(1) or 16(1) must fulfil any requirements prescribed by the Scottish Ministers in regulations.

## **D REASONS FOR DECISION**

1. The Application is made under Rule 107 of the Procedural Rules. Rule 107 (b) of the Procedural Rules states that such an application must be accompanied by “a copy of the notice given to the landlord under section 16(3)(c) of the 2016 Act”.
2. The FTT considers that in order to be lodged correctly the application has to be lodged with a copy of a valid notice under S 16 (3) (c) of the Act. A valid notice requires that it has been served and has expired prior to the application being lodged. The applicant has not provided any proof of service on the landlord. The notice is dated 24 March 2021 and thus, even if one assumed that it was served on that day, in terms of S 17 (1) (b) would not expire until 28 days after it is served and thus not until 21 April 2021 at the earliest. On that day the applicant was no longer a tenant of the property as he states the tenancy ended on 15 April 2021
3. In terms of S 16 (3) of the Act, however, “An application under subsection (1) (a) may be made only during the course of the tenancy in question”.

4. 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.” It would not be possible for the applicant to submit the necessary documents until after the expiry of the notice period for the required notice to the landlord. The notice period cannot have expired until after the end date of the tenancy on 15 April 2021. Thus the application cannot be made validly during the course of the tenancy.
5. It would not be appropriate for the Tribunal to accept an application that has been made without the necessary notice and it will not be possible for the applicant to submit the application with a valid notice after the end of the tenancy. The application is thus rejected.
6. A further ground of rejection in this case is that the notice referred to above indicated as the information not provided in terms of s 11 information, which is defined in Regulation 42 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 rather than information stated in the Regulations to which S 11 of the Act applies, namely Regulation 3 of The Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017. The information referred to in S 11 of the Act as stated in Regulation 3 (1) (a) and (b) of the said Regulations is either the Easy Read Notes or the Private Residential Tenancy Statutory Terms Supporting Notes depending on whether the tenancy agreement was in form of the Model Private Residential Tenancy agreement or a tenancy agreement drafted by the landlord. The information stated on the notice the applicant submitted is not information which falls under S 11 of the Act and thus could not give rise to an application under S 16 of the Act.

### **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

13 May 2021

