



**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 and 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

38 Kinneff Crescent, Dundee, Angus, DD3 9RG

Case Reference: FTS/HPC/PR/21/2105

Stephanie Nichol 94 Strathmore Avenue, Forfar , Angus ("the Applicant")

**Alison Bruce Property Management Limited 34 Faraday Street Dryburgh
Industrial Estate, Dundee DD2 3 QQ ("Respondent")**

1. On September 2021, 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 failure to pay a tenancy deposit into a tenancy deposit scheme by the Tenant against the Landlord.
2. The Applicant advised that the end of the tenancy took place on 14th June 2021 and she made the application on 31st August 2021 which was received by the Tribunal on 1st September 2021.
3. The Tribunal requested further information from the applicant by letter dated 15th September 2021. The Tribunal asked for the following information:-

Before a decision can be made, we need you to provide us with the following:

1) An application brought in terms of Tribunal Rule 103 under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be brought against a landlord, and not against the landlord's letting agent. Please confirm if you wish to amend your application to substitute the landlord as respondent, and if so, please provide their address and details. 2) Please provide a full copy of the lease agreement – you have only provided 3 of the 11 pages. 3) Please provide evidence of payment of the deposit.

Please note that this information must be provided to the Tribunal by no later than 5pm on 14th September 2021, as there is a time-limit of 3 months from the end of the tenancy (14th June 2021) in which you are able to bring this application."

4. Despite the fact the letter has actually been sent after the deadline to respond no response has been received from the Applicant at all.

5. The Applicant has failed therefore to provide required information to support her application before the end of the three months from the end of the tenancy.

6. 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."

9. 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 of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

10. 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.
11. The applicant has failed to respond to the Tribunal's request for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. The Applicant was advised that all information required had to be supplied by the end of the three months from the end of the tenancy as Section 9 of the Regulations require that the application is made not later than three month after the tenancy has ended. The applicant has not applied with the relevant information required to allow the application to be accepted within that period and has not responded to a request for further information. That gives me good reason to believe that it would not be appropriate to accept the application in circumstances as the applicant has been unable to

provide the relevant information or respond to the Tribunal's enquiries in order to progress this application.

12. The Applicant has raised this application against the Respondent who appears to be the letting agent and not the landlord in this tenancy and as the obligation to lodge the deposit rests with the landlord, this application is apparently not competent.

13. 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.

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
8th October 2021