



**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/24/1464

Parties

Mr Marcin Mierzynski (Applicant)

Mitchells Properties Sales and Lettings (Respondent's Representative)

2/1 349 Paisley Road West, Glasgow, G51 1LX (House)

1. The application under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 by the Applicant was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 28.03.24. The Applicant did not provide a copy of the tenancy agreement and directed the application against the Letting Agent Mitchells Property Sales and Lettings. The end of tenancy date is stated on the application as 27.12.23.
2. All correspondence is referred to for its terms and held to be incorporated herein

brevitatis causa.

DECISION

3. 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."

4. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

5. Relevant provisions:

Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

9 (1) a tenant who has paid a tenancy deposit may apply to the First tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 of that tenancy deposit.

(2) an application under paragraph (1) must be made no later than 3 months after the tenancy has ended.

Reasons:

6. It would not be appropriate for the Tribunal to accept an application after the expiry of the period during which such an application can be made. The legislation is clear, in terms of regulation 9 as set out above, an application under regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made no later than 3 months after the tenancy has ended and can only be made against a landlord, not against a letting agent.
7. In terms of rule 5 of the Rules of Procedure “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 103... as appropriate.” Rule 5 (c) states that the FTT President or another member under delegated powers may request further documents and the application is to be held to be made on the date the FTT receives the last of the outstanding documents necessary to meet the required manner for lodgement. An application 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
8. An application under rule 103 can only be directed against a landlord and not against a letting agent. The application was clearly directed against the letting agent, who, the Applicant states, did not put the deposit into a registered scheme.
9. According to the information provided with the application, the tenancy ended on 27.12.23. The date 3 months after that end date is thus 27.3.24. The application was only received by the FTT on 28.3.24 and in terms of rule 5 of the Procedure Rules is currently still not complete. The application does not state the landlord details as required by rule 103 (a) (iii) of the Rules of Procedure. The Applicants did not provide a

copy of the tenancy agreement as required in rule 103 (b). As at the time the application was received it was incomplete. The 3 months period had expired. At this time the application can no longer be completed and validly made within the time limit stated in Regulation 9.

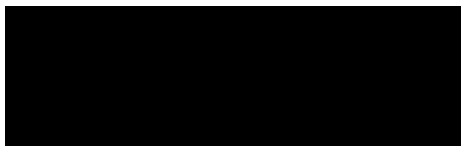
10. There is no provision that would give the FTT the authority to extend the statutory time limit set out in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
11. It would not be appropriate to accept such an incomplete application, which can no longer be completed within the statutory time limit.
12. The application is thus rejected because it was made later than 3 months after the tenancy had ended and was not lodged in accordance with rule 103 of the Rules of Procedure.

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.



Legal Member
3 April 2024