



**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/25/4036

**Parties**

**Wai Tin Arthur Sze (Applicant)**

**Flat 1-2, 65 Victoria Street, Rothesay PA20 0AP (House)**

1. On 19.9.25 the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received the application from the under Rule 103 of the Rules of Procedure. It was accompanied by a copy of the tenancy agreement, correspondence about the deposit, correspondence regarding the tenancy end and evidence from the three deposit schemes that the deposit had not been lodged with any of them. The end date of the tenancy was stated in correspondence as 8.6.25.
2. On 26.9.25 the FTT wrote to the Applicant in the following terms: It is noted that this is a Rule 103 application claiming that the Respondent (landlord) had failed to comply with the Tenancy Deposit Regulations. However, it is noted from some of the paperwork that the tenancy end date appears to have been 8 June 2025. Unfortunately, in terms of the legislation, such an application requires to be lodged within 3 months of the end date of the tenancy, and your application was not received until 19 September 2025. There is no discretion open to the Tribunal to accept a late application. Accordingly, you may wish to withdraw this application, as otherwise it will require to be formally rejected. The Applicant was asked to confirm the position by 3.10.25 but no reply has been received.

3. 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

**Rule 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

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

(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 in respect of that tenancy deposit.

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

## **D REASONS FOR DECISION**

1. In terms of Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(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 in respect of that tenancy deposit. (2) An application under paragraph (1) must ... be made no later than 3 months after the tenancy has ended.” Regulation 10 then states: “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...”
2. The Applicant states the tenancy ended on 8.6.2025.
3. The period of 3 months within which the application can be lodged started on the end date of the tenancy and thus on 8.6.2025 and expired on 8.9.2025. The application was not made until 19.9.2025 when it was received by the FTT.
4. This date was already outwith the 3 months period stated in the Regulations. Thus a valid application under the legislation can no longer be made.

5. It would not be appropriate for the Tribunal to accept an application which is made out with the 3 months time limit stated in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
6. The Upper Tribunal has confirmed in previous decisions that the FTT is bound by the lodging requirements stated in primary legislation and regulations and does not have the power to accept applications which do not meet the statutory requirements for such applications. In UT 18 [2019] Sheriff Deutsch states: “ [1] *The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and subordinate legislation in the form of regulations made by the Scottish Ministers.* In UT60 [2019] Sheriff Di Emidio states at paragraph 14: “*It does not matter whether the application was treated as having been submitted on 18 February 2019 or 27 March 2019 or 4 April 2019 or 15 May 2019. The FtT’s decision was correct because the information provided by the appellant meant that the application was too late having regard to statutory time limit stated in rule 9. The fact that the HPC Administration required him to submit a different form may have served to muddy the waters but there is no arguable error of law arising out of maladministration which has contributed to any injustice to the appellant.*”
7. The application thus has to be rejected.

### **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

17 October 2025