



**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

**Case Reference: FTS/HPC/PR/22/0089**

**Flat 2, 4 Mansionhouse Court, Glasgow, G41 3DD (Property)**

**Mr John Scanlon 90 Drakemire Drive, Glasgow (The Applicant)**

**Miss Emma O'Hara c/o Flat 3/2 61 Terregles Crescent Glasgow (The Respondent)**

1. On 5<sup>th</sup> January 2022, 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 timeously into a tenancy deposit scheme by the Tenant against the Landlord.
2. The Applicant lodged a copy of various e-mails from Safe Deposit Scotland and messages from the landlord.
3. The Tribunal requested further information from the applicant by letter dated 17<sup>th</sup> January 2022. The Tribunal asked for the following information in respect of this application:-

*I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:*

- *Please provide a copy of the tenancy agreement. If you are unable to provide this please provide as much information about the tenancy as you can and evidence that the deposit was due and paid.*

- *Please confirm the date on which the tenancy ended and provide evidence of this. The application cannot proceed without this information. Please note that an application under Rule 103 must be lodged, together with all required information and documents, no later than 3 months after the tenancy has ended.*

*Please reply to this office with the necessary information by 31 January 2022. If we do not hear from you within this time, the President may decide to reject the application.*

4. The Applicant's responded on 17th January 2022 and provided several e-mails enclosing a copy of the tenancy agreement, confirmation of the end of the tenancy and an e-mail regarding rent arrears. The tenancy is a private rented tenancy which commenced on 19<sup>th</sup> August 2019. The Applicant is alleging that the full deposit was not lodged timeously. The response regarding the end of the tenancy states:- "I held back the keys on 6th September 2021 and vacated the flat" the applicant goes on to also copy an e-mail sent to the letting agent Craig Gardiner on 6<sup>th</sup> September 2021 which states " That's me moved out Craig. Keys are in the kitchen."

The Applicant has admitted that the tenancy ended over 3 months ago.

## **5. DECISION**

6. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

- 7.

*"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."*

8. 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**

9. 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.
10. The applicant has confirmed that the tenancy ended on 6<sup>th</sup> September 2021. This application has been made on 5<sup>th</sup> January 2022, this is more than 3 months since the end of the tenancy. In terms of S9 of the Tenancy Deposit Schemes (Scotland)

Regulations 2011 an “application under paragraph 1 must ...be made no later than 3 months after the tenancy has ended.” This application was made more than 3 months after the end of the tenancy. The Applicant was advised of that in the request for further information. In the circumstances I consider that this application is misconceived and has no hope of success therefore it must be rejected.

11. 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  
19<sup>th</sup> January 2022