

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

Kye Pairk, Hume Holdings, Greenlaw, Duns, TD10 6UW ("the property")

Case Reference: FTS/HPC/CV/21/0276

Parties

**Miss Lorraine Wright, Mr Aaron Kyle (Applicant)
Mr Stuart Laing, Mrs Lisa Laing (Respondent)**

1. The application dated 2 February 2021 was initially submitted to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 111 of the Procedural Rules as a civil application. Due to the content of the application the Tribunal asked the applicants whether they were actually seeking to raise an application under rule 103 and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. An application so amended was then lodged on 24 February 2021. The application referred to the documents and entries submitted in the original application.
2. In the application the dates of the tenancy agreement are stated as commencing on 17

July 2019 and ending on 14 August 2020.

3. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

DECISION

4. 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."

5. 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

6. 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:


7. 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.
8. In this case the tenancy ended on 14 August 2020. Even if one accepted the original application as the date when it was first raised the application was not made to Tribunal until 2 February 2021 and thus several months out with the period during which such an application can be validly made.
9. The applicant is obviously free to lodge any application under other Rules which are not time critical.
10. However, the application in terms of Rule 103 for an order of payment of up to 3x the deposit due to noncompliance of the landlord with the requirements under regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 is made out with the time period stated in regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and it would not be appropriate to accept an application that has been clearly made out of time. The application is thus 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
2 March 2021