

**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDE, 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 Rules")

in connection with

29A BEDFORD AVENUE, ABERDEEN, AB24 3YN ("the property")

Case Reference: FTS/HPC/PR/19/1270

**SINEM GAMZE YAYMAN, 103 HAMMERMAN AVENUE, ABERDEEN, AB24 4SE ("the
Applicant")**

**CLAIRE MORRISON, MAINS OF BODINFINNOCH, MULBEN, KEITH, AB55 6YX ("the
Respondent")**

1. On 25 April 2019 an application was received from the applicant. The application was made as an application under Rule 103 of the Rules of Procedure on FORM G.
2. The application was directed against a Claire Morrison as the Respondent.
3. The application included as evidence a copy tenancy agreement for the property stating clearly as the landlord a James Morrison.
4. The application also included a text message exchange between the Applicant and a Claire which includes a text from the Applicant to said Claire stating "I have already secured a new place to stay and intend of leaving on the 11th of January." The reply states "I will try to come over on the 11th to collect keys, but if not just leave them in your room".
5. The application was accompanied by a tenancy agreement copy indicating the start of the tenancy as 12 September 2018.
6. It is thus clear that the 11th January date referred to is 11th January 2019.

DECISION

The Legal Member considered the application in terms of Rule 8 of the Chamber 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."

After consideration of the application, the attachments and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that they 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.

Reasons for Decision:

Relevant Legislation:

In terms of Rule 103 of the Rules of Procedure the requirement for the lodging of an application is that the application must state (a) *(i) the name and address of the tenant or former tenant. (ii).... (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.*

In terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011 Regulation 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 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. "

The tenancy ended on 11 January 2019 as evidenced by the text messages lodged with the application. The application was not made until 25 April 2019. The application was thus lodged outwith the 3 months period prescribed by Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.

It is thus not appropriate to accept the application because it has been made after the expiry of the period in which such an application can be made.

Furthermore, the application in terms of Rule 103 has to name the landlord and in terms of Regulation 9 (1) has to be made against a landlord who did not comply with a duty in regulation 3. The landlord stated in the tenancy agreement is James Morrison, the application was not made against the landlord but against a Claire Morrison.

It is thus not appropriate to accept the application because it has not been made against the

landlord stated in the tenancy agreement.

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.

P Hennig-McFatridge

~~Petra Hennig McFatridge~~

Legal Member
8 May 2019