



**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/23/0881

Parties

Mr Owain Jones (Applicant)

Latchcross Limited (Respondent)

179 Union Street, Flat E, Aberdeen, AB11 6BB (House)

1. The application was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. It was dated 17.3.2023 and received by the FTT on 20.3.23.
2. The applicant provided end of tenancy correspondence referring to an end date of the tenancy at the end of October and showing an email that the keys were returned on 12.11.22. The Applicant had also provided a tenancy agreement showing as the landlord Latchcross Ltd, a bank statement confirming payment of the deposit, correspondence regarding the tenancy end, enquiries with the deposit schemes and correspondence regarding the initial payment of the deposit. The Respondent was stated to be Latchcross Rental.

3. On 24.3.23 the FTT wrote to the Applicant in the following terms: "*• There appears to be joint tenants. Please confirm whether or not you are applying on behalf of both tenants. If so please provide written authorisation from the joint tenant to do so. • Please confirm the tenancy end date. From the emails you have provided it appears that the tenancy may have ended in October 2022. If that is correct then your application will have been made out of time. All applications in respect of a failure to protect a tenancy deposit must be made within 3 months of the tenancy end date. The Tribunal has no discretion to extend this time limit.*"
4. On 3.4.23 the Applicant replied: "*In the case of the Join Tenatcy, it was with my partner Jade Young [jadeey2016@gmail.com]. See attached document. In theory, the Tenentcy ended in October 2022, but due to many setbacks on the Landlord's fault, the reality of that date is somewhat blurry. They refused to even consider giving my deposit back until they got their keys (which is a fair enough argument), but they dragged their feet on even that. Addtiaonly I did not discover the infringement in my contract regarding the ill handling of my deposit until February when I began investigating, and at the time, it was still within 3 months of my landlord's last contact before ghosting me. Does this cease being a crime because I didn't discover it quickly enough? If not through Tribunal what are my options?"*
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

7. 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

8. In terms of Rule 103 of the Procedural Rules an application under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 has to
“(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”
9. In terms of regulation 9 (2) 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**”.
10. In terms of rule 5 of the Procedural Rules (Requirements for making an application)
“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 to be 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) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this is the application and complete a request for service by advertisement in accordance with paragraph (5).

..... "

11. The application is rejected because the applicant has not lodged the application within 3 months in terms of Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011. The tenancy end is stated as either the end of October 22 or 12.11.22 which is the date the keys were returned. The application was not made until 17.3.23, which is more than 3 months after the keys had been returned.
12. An application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made within 3 months of the end of the tenancy. By the time the application was made to the FTT it was already time barred. The application cannot now be validly made within 3 months of the date of the end of the tenancy.
13. The application also did not correctly describe the Respondent as it was made against Latchcross Rental rather than against the landlord stated in the tenancy agreement, Latchcross Ltd. Even if the Applicant were now to amend the application it would still be out of time.
14. In making this decision, I have specifically considered the recent Upper Tribunal decision UTA/AP/22/0015, which dealt with the issue of time bar. In that case all necessary information had been provided when the application was first lodged and the UT held that "[12] The application may have been rejected on the basis that it was not made within the

time limit stipulated in rule 9 of the 2011 regulations. The basis upon which it can be said that this in turn automatically renders the application frivolous is not immediately apparent. It may have been more appropriate to reject the application – if that were a sound basis for so doing – on the basis of invoking rule 8(1)(c) - that there was good reason to believe that it would not be appropriate to accept the application. A good reason may be in circumstances that the time limit has not been complied with and therefore the application is not competently before the FTT.” I consider in this case that since the application was made outwith the 3 months period it would not be appropriate for the FTT to accept the application as the FTT has no discretion to accept applications after they have been time barred.

15. The Respondent asked: *“Does this cease being a crime because I didn't discover it quickly enough? If not through Tribunal what are my options?”*. For the sake of completeness the Applicant should note that noncompliance with the tenancy deposit scheme regulations is not a criminal offence. The FTT is a judicial body and cannot give advice. The Applicant would have to seek legal advice from a solicitor or from a free advice body such as Shelter, the CAB or one of the law clinics. Links to some of these organisations can be found in the “useful links” tab on the FTT’s website.
16. It would not be appropriate for the FTT to accept an application that is made out with the statutory time frame stated in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011. 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 McFatrige

Legal Member

4 April 2023