



**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/21/2372

Parties

Josh Johnston, Dr Rudi Brabbs (Applicant)

Mr Ajitpal Dhillon (Respondent)

1/1 20 Rupert Street, Glasgow, G4 9AR (House)

A BACKGROUND

1. On 30 September 2021 the Applicant Dr Brabbs lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 103 of the Procedural Rules regarding the property. The application gave no information as to when the tenancy ended and only stated “Evidence of the end of the tenancy not available despite requests to the landlord”. No end date was specified in the application. The application email was in the names of Rudi Brabbs & Josh Johnston but no details for Mr Johnston were provided. The documents submitted with the application were an extract of a tenancy agreement and an email from SafeDeposits

Scotland dated 9 November 2020.

2. On 8 October 2021 the Tribunal wrote to the Applicant: *“Before a decision can be made, we need you to provide us with the following: 1. Can you please advise when the tenancy ended? You advise you have no evidence of this but you have not confirmed the date it ended and as there is a time limit for applications including all relevant information to be provided of 3 months from the end of the tenancy then this information is crucial. The copy tenancy agreement you have lodged indicates the tenancy may have ended on 31st July 2021 if this is correct then you have until 31st October at 5pm to respond to the Tribunal with confirmation of the end of the tenancy and the further information requested below. Please note that if the tenancy has ended earlier than this date it may already be out of time and your application may have to be refused. Please advise as soon as possible. 2. Please advise if there is a second tenant in the tenancy of this Property namely Mr Josh Johnson who is mentioned in the lease but not named as a tenant. If he was a joint tenant please confirm if he wishes to join this application and please provide his full name and address. 3. Please provide any evidence of payment of the deposit if available. You correctly indicate that any application for money or repossession of property will require to be made separately and you can do this by completing a Form F under Rule 111 further details of which you will find on our website.”*
3. On 14 October 2021 the following answer was received: *“Thank you for your reply. Please find the information you asked for below. 1. Our tenancy ended on 1st July 2021. I understand the 3 month limit has now passed but our initial application was within the 3 month limit. 2. Josh Johnston was a joint tenant and he would like to join this application. His address is now flat 7E, Centro house, Wellgreen place, Stirling, FK8 2DZ. His email address is josh.johnston@hotmail.co.uk. 3. Please find attached a bank statement from the time. The deposit was paid on the 7th August.”*

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

103. Where a tenant or former tenant makes an application under regulation 9 (**[F65**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

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.

D REASONS FOR DECISION

1. The Application is made under Rule 103 of the Procedural Rules. Rule 103 (a) and (c) of the Procedural Rules states that such an application must state the name and address of the tenant or former tenant and must state evidence of the date of the end of the tenancy (if available).
2. The application provided no information of the end date of the tenancy although the tenancy had clearly come to an end. The details for Mr Johnston were missing from the application although the application email was in the name of both Applicants.
3. 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...”
4. The Applicant Dr Brabbs advised after the request for further information that the tenancy ended on 1 July 2021 and provided the details for the second signatory to the

lodging email.

5. In the letter of 8 October 2021 the Applicant was specifically advised *“Please note that if the tenancy has ended earlier than this date it may already be out of time and your application may have to be refused. Please advise as soon as possible.”*
6. In terms of Rule 5 (3) of the Procedural Rules “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.” In this case the full information required for the application, in particular the information about the end date of the tenancy and the details of the second applicant, were not lodged until 14 October 2021. Unfortunately for the Applicant, in terms of Rule 5 (3) of the Procedural Rules by then it was too late to make a valid application to the FTT under Rule 103 because of the clear definition of the date when the application is made as stated in Rule 5 (3) and of the time limit set out in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
7. It would not be appropriate for the Tribunal to accept an application has been made out of time and it would not be possible for the FTT to accept an application which was not competently made because it did not contain all relevant information on 30 September 2021.
8. The application is thus rejected.
9. Obviously this does not affect any rights of the Applicant to make an application under Rule 111 for other issues raised in the initial application. Rule 111 applications are not time limited in the same way as Rule 103 applications.

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

15 October 2021