

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
Case reference FTS/HPC/PR/22/3988

Parties

**Mr Ethan Hunt, Ewan Watt, Cameron Kier, Kieran Rutherford, Philip Cooper
(Applicant)**

Sandstone (Respondent)

1/L, 2 Union Street, Dundee, DD1 4BH (House)

1. The application was submitted to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules and Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 by the Applicant on 21.10.22. The application gave the address of the first named Applicant but not of the other 4 Applicants, did not provide a copy of the tenancy agreement, did not give the end date of the tenancy but mentioned in the cover letter "I am looking to take action regarding a property deposit on a property we left in January".

2. The FTT wrote to the Applicants on 4.11.22 and 30.11.22 requesting a copy of the tenancy agreement, the end date of the tenancy and the other Applicants' addresses as well as confirmation that the Respondent was the landlord rather than the letting agent for the tenancy.
3. The Applicant reacted to the first request for further information by providing correspondence from SafeDeposits Scotland, which is undated but confirms that the deposit was lodged with the scheme on 7.2.22. Unfortunately the Applicant did not provide the information requested in the letter of 4.11.22, which triggered the second letter from the FTT. There was no reply to the FTT's letter of 30.11.22.
4. All correspondence is referred to for its terms and held to be incorporated herein brevitatis causa.

DECISION

5. 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."

6. 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

7. 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:

8. 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.
9. According to the information provided with the application, the tenancy ended in January 2022, although no precise end date is given. The date 3 months after that end date is some time in April 2022. The application was only sent to the FTT on 21.10.22 and in terms of rule 5 of the Procedure Rules is currently still

not complete. This is in any event out with the 3 months period, within which an application can be lodged. The Applicants also did not provide the Applicants' full details as required in rule 103 (a) (i), the tenancy agreement as required in terms of rule 103 (b) and evidence of the end date of the tenancy as required in terms of rule 103 (c) of the Rules of Procedure.

10. There is no provision that would give the FTT the authority to extend the statutory time limit set out in Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011. The application has not been fully completed despite two letters from the FTT for the necessary information to complete the application. In those circumstances it would not be appropriate to accept such an incomplete application, which was clearly made out with the statutory time limit.

11. The application is thus rejected because it was made later than 3 months after the tenancy had ended and was not lodged in accordance with rule 103 of the Rules of Procedure.

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
12 December 2022