



**DECISION AND STATEMENT OF REASONS OF JAN TODD, 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/23/2072

Parties

Mr Oluwatimilehin Odumosu (Applicant)

Mr Antti Ong (Respondent)

100 Victoria Road, Torry, Aberdeen, AB11 9DU (House)

1. On 23rd June 2023, an application was received from the applicant. The application was made under Rule 103 of the Procedural Rules, being an application for an order for a penalty for failure to pay a tenancy deposit into a tenancy deposit scheme by the Tenant against the Landlord.
2. The Applicant provided a copy of the tenancy agreement and emails indicating the end of the tenancy was 30th March 2023. He also advised that the address of the Respondent would be forthcoming from information he was waiting on from the police.
3. The Tribunal wrote to the applicant by letter dated 28th June 2023. The Tribunal asked for the following information:-

"I refer to your recent application which has been referred to the Chamber

President for consideration. Before a decision can be made, we need you to provide us with the following:

1) Confirmation of the end date of the lease agreement. You have provided an e-mail dated 30th March 2023 stating that you had vacated the property. Please note that this application must be made within 3 months from the date when the lease ended, and that 3 month period runs until the Tribunal receives your response, so please respond by 30th June 2023 at latest.

2) You seek an order for refund of the deposit. An application under rule 103 is for compensation only. If you also wish to seek repayment of the deposit, you will require to seek that in a separate and additional application under Tribunal rule 111. If you do seek compensation in this application, you need to ask for that in section 7(c) of the application form and state the amount of compensation which you seek.

3) The Tribunal requires an address for the Respondent. If he cannot be traced, you need to provide evidence of efforts you have made to trace his address and seek service by advertisement. Please reply to this office with the necessary information by 12 July 2023. If we do not hear from you within this time, the President may decide to reject the application.

The Applicant responded on 29th June 2023 and advised in relation to this application:-

*“The email I attached which is dated 30th of March stating I have vacated the property confirms the termination of the lease agreement. I have also made a separate application to recover the deposit under tribunal rule 111. The order to refund the deposit was included in error on my part. Lastly, as stated above, efforts have been made to obtain the landlord's address but the information has **not been provided** by Police Scotland. Email correspondence has been attached to this email. Please let me know if you require more information “*

4. DECISION

5. I considered the application in terms of 8 of the Procedural Rules. Those Rules provide:-

"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 on the basis that I 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

7. The Tribunal has requested further information from the applicant in order to consider whether or not the application can be accepted or whether it must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9.

At page 16, he states:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".* It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success. The Tribunal also has to consider whether there is good reason to believe it would not be appropriate to accept the application.

8. The applicant has confirmed that they have submitted the application under Rule 103 after 3 months from the date of the end of the tenancy. Regulation 9 of the 2011 Regulations states:-

"9(1) A Tenant who has paid a tenancy deposit may apply to the (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 by (summary application) and **must** be made no later than 3 months after the tenancy has ended."*

9. Applications were formerly made to the Sheriff by summary application but now need to be made to the Tribunal. Given the strict terms of Regulation 9 (2) the Tribunal has no discretion to consider an application for a penalty for failure to lodge a tenancy deposit in a tenancy deposit scheme which has been made after the 3 months has passed. The wording in the Regulation is clear **"an application must be made no later than 3 months after the tenancy has ended"**. There is no discretion in the legislation. The Applicant admit they left the Property on 30th March 2023 the application was submitted within the 3 months but does not contain the address of the Respondent which is one of the required elements for a Rule 103 Application. The application is not made until all mandatory requirements for lodgement have been met in terms of Rule 5, which states "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 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."

10. As the Respondents address has not been provided the Application is therefore incomplete and is time barred, as even if the Applicant produced an address or

application to serve by advertisement now, it would be after the 3 months period and so timebarred. As such the application is futile and has no prospect of success as it is timebarred.

11. Accordingly, for this reason, this application must be rejected upon the basis that I 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.

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.



Jan Todd
Legal Member
4th July 2023