



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

16a Ladyland, Maybole ("the Property")

Case Reference: FTS/HPC/PR/21/2249

Melony Orr, 70 Elba Street, Ayr ("the Applicant")

Iain Campbell, 68 Doonfoot Road, Ayr ("the Respondent")

1. On 16 September 2021, The Applicant lodged an application with the Tribunal seeking an order in terms of Rule 103 of the Procedure Rules and Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). No documents were submitted in support of the application.
2. On 6 October 2021, the Tribunal issued a request for further information. The Applicant was directed to provide a copy of the tenancy agreement, the date on which the tenancy ended and evidence of the end of the tenancy. In the letter, the Applicant was reminded that an application under Rule 103 had to be submitted, with all required information and evidence, no later than 3 months after the tenancy had ended. On 12 October 2021, the Applicant asked for additional time to provide the information. The Tribunal granted the request but stated that any grant of additional time by the Tribunal did not affect the time limit for applications under the 2011 Regulations and that it was the Applicant's

responsibility to ensure that all relevant information and documents were submitted no later than 3 months after the end of the tenancy. On 15 October 2021, the Applicant submitted a photograph of the tenancy agreement. On 21 October, in response to a further letter from the Tribunal, she submitted a copy of a notice from the Landlord. She stated that the tenancy had ended on 16 July 2021 although the keys had been returned on 13 July 2021.

DECISION

3. 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.”

4. **After consideration of the application and documents lodged in support of same the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.**

Reasons for Decision

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. Regulation 3 of the 2011 Regulations states - "(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy – (a) pay the deposit to the scheme administrator of an approved scheme." Regulation 9 of the 2011 Regulations states – "(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"**
7. Rule 5 of the Tribunal Procedure Rules states, "(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 lodgment 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 requirement manner for lodgment.” Rule 103 of the Procedure Rules requires an Applicant to lodge a copy of the tenancy agreement and evidence of the end of the tenancy with the application.

8. The application was lodged on 16 September 2021 without a copy of the tenancy agreement or details and evidence as to the end of the tenancy. The Applicant had therefore not complied with Rules 5(1) and 103 of the Procedure Rules. A Legal Member of the Tribunal determined that the mandatory requirements for lodgment had not been met and directed the Applicant to provide the missing documents. The Applicant was reminded of the time limit which applies to applications under Rule 103. The Applicant provided a copy of the tenancy agreement on 15 October 2021 but did not provide the date and evidence of the end of the tenancy until 21 October 2021. The mandatory requirements for lodgment were therefore not met until 21 October 2021. As the tenancy had ended on 16 July 2021, this information and documentation was received five days after the date by which the application must be lodged in terms of the 2011 Regulations.

9. As the application has not been submitted within the time limit stipulated in the Regulations, the Tribunal cannot entertain it. The Legal Member therefore determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.

Josephine Bonnar

Josephine Bonnar
Legal Member
22 October 2021