



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Dr Ileana Lucia Selejan in terms of rule 103 of the Rules.

Case reference FTS/HPC/PR/23/2720

At Glasgow on the 12 September 2023, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules

1. This is an Application by Dr Ileana Lucia Selejan, ostensibly in terms of rule 103 in respect of a tenancy deposit for 46A Blacket Place Edinburgh EH9 1RJ, ‘the property’. The application was made on 11 August 2023.
2. The in house convener reviewed the Application and an email was sent by the Tribunal on 14 August 2023 as follows:
 - (1) You state that you wish to recover your tenancy deposit, therefore, the correct application rule is 111 and not 103. Please see our website to access the correct application form, subject to your answer to point 2 below.
 - (2) You have stated that the Respondent’s address is the same address as the property you rented. Did you live in the property at the same time as the Respondent? If so, there may be a question over whether the tenancy was a private residential tenancy and whether the Tribunal has jurisdiction to consider this case. If you did not reside at the same address at the same time, did the Respondent move to the address thereafter? We must have a proper address for service of the application on the Respondent
 - (3) It is noted that there is a joint tenant. Please confirm if they are to be a joint applicant by adding their details to the amended application form, or provide their written authorisation to the application proceeding in your sole name.
 - (4) It is noted that there is a joint landlord. Please confirm it they are to be a joint respondent by adding their details to the amended application form.’ Please reply to this office with the necessary information by 28

August 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. The Applicant responded on 15 August 2023 by stating the following:

Thank you very much for your response. I will fill out the form you indicate instead.

Just to make sure, on your website I have found the following information: "CHAPTER 11 Procedure in respect of tenancy deposit applications 103. Application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits."

In this case, the landlord has failed to carry out duties in relation to my deposit specifically which they have kept claiming a need to pay off energy bills. This was unjustified and contravened the agreement we had. Is this not indeed the correct form? With regards to your second question. The landlord indeed has the same permanent address, however they reside part of the year (9 months) in Spain during which time they rent out their house. Should I explain this in writing?

I have one last question: indeed the couple Patricia Cacho Hill and Martin Gill are both listed as landlords on the tenancy agreement, however I only made payments to her personal account. I can certainly list them both, I just assumed she would be the main respondent. If you could please clarify these points, I will resubmit the documentation as quickly as possible.

4. The tribunal sent a further email on 18 August 2023 as follows:

- (1) The Tribunal cannot provide you with advice. Advice may be obtained from Shelter Scotland, CAB or a solicitor.
- (2) The Tribunal cannot order repayment of your deposit under Rule 103. If you wish to seek repayment of your deposit please lodge a separate application under Rule 111.
- (3) If you wish to amend to include both landlords please submit an amended application Form.
- (4) If you are to include the joint tenant please submit an amended application form including their details or provide written authorisation from them for you to pursue this matter in your sole name. Please note that applications under Rule 103 must be made within 3 months of the tenancy end date. The Tribunal has no discretion to extend the time limit. Please reply to this office with the necessary information by 1 September 2023. If we do not hear from you within this time, the President may decide to reject the application.

5. The Applicant responded on 30 August 2023 by making a rule 111 Application to recover the tenancy deposit. The Applicant stated "please find attached my revised application." The Applicant did not withdraw this rule 103 Application. The Applicant produced a series of emails with the new Application. In particular there was an email from the Respondent dated 26 May 2023 which stated:

The return of the deposit will depend on the following: 1. addressing any outstanding balance on the energy bills based on actual usage during your tenancy. 2. a positive outcome to a house inspection after you have left the property. We are confident you have taken reasonable care of the house and the garden. The deposit

repayment process will follow the guidelines and requirements of Safe Deposit Scotland, which hold your deposit, as per the contract, on behalf of both yourselves as tenants and us as landlords.

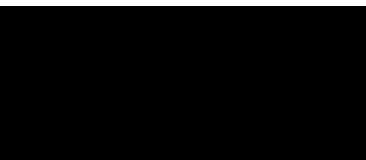
6. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if ***“they consider that an application is vexatious or frivolous”***.
7. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall) Magistrates 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”.
8. I consider that this application is misconceived and has no reasonable prospect of success as it is clear that the Applicant submitted a rule 103 Application in error. The Applicant has a dispute with the Respondent regarding the return of her deposit. She has made a new Application in terms of rule 111 for the return of the deposit. The correspondence with the Respondent she has provided makes it clear that the deposit was lodged in a deposit scheme. An Application in terms of rule 103 is therefore misconceived.
9. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as the Applicant has made a new Application in terms of rule 111 dealing with the same matter and she has failed to withdraw this Application as requested.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Lesley Anne Ward

Legal Member