



**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/23/0379

Parties

Miss Tabitha Gerry (Applicant)

Purple Bricks SC08047368 (Respondent)

Flat E, 23 Summerfield Terrace, Aberdeen, AB24 5JB (House)

1. The application dated 4.2.2023 was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 and received by the FTT on 6.2.2023.

2. The applicant provided a checkout report dated 4.11.22 and an invoice relating to rent to 8.11.22 as well as a copy of the tenancy agreement. The application was specifically directed against Purple Bricks, the letting agent.
3. On 15.2.23 the FTT wrote to the Applicant asking to confirm the end date of the tenancy as this was not clear from the documents lodged, informing the Applicant that an application of this nature had to be directed against the landlord and not the letting agent and informing the Applicant that the deposit return would have to be dealt with by a different kind of application in terms of rule 111.
4. On 22.2.23 the Applicant replied: Hope you had a good weekend. Regarding the incorrect date, I'm not sure why the date was incorrect. I have attached the other email I have, which was prior to the receipt that I received after I paid the final rent payment- that I attached to the previous email. This was the amount that should match the receipt. I may also be able to find this in my banking records. But all other information regarding this was over the phone - I did have to chase for this, as I did for the checkout information, as I think the person who was in charge of my rental was changed throughout at purplebricks. Though I did pay for rent up until the date on the receipt. I will take a look at the other form, thank you for that. The landlord was Ms Zheng Lanqiao according to my tenancy agreement. Thanks.
5. On 25.2.23 the FTT wrote to the Applicant again requesting confirmation clear confirmation of the end date of the tenancy and an amendment to the application to change the respondent from Purple Bricks to the landlord and to provide the landlord's address. The period for lodging said information was stated as 6.3.23.
6. No reply has been received by 29.3.23.

DECISION

7. 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."

8. 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

9. In terms of Rule 103 of the Procedural Rules an application under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 has to
- “(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***
10. In terms of regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011
- “an application under paragraph (1) must.....be made no later than 3 months after the tenancy has ended”.

11. In terms of rule 5 of the Procedural Rules (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.

(4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this is the application and complete a request for service by advertisement in accordance with paragraph (5).

..... “

12. The application is rejected because the applicant has not provided the necessary information for lodging the application within 3 months in terms of Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011. The tenancy end is stated as either 4.11.2022 (the date in the check out report) or 8.11.22 (the date mentioned in the invoice). Although the application reached the FTT on 22.2.2023, the email referred to a further email and did not explicitly confirm the end specific end date. Whilst the Applicant stated the name of the landlord, no respondent address details were provided as required in terms of Rule 103 (a) (iii) of the Procedural Rules. In terms of Rule 5 (1) of the Procedural Rules an application is only held to have been made on the date it was received if at that time it was made in accordance with the relevant provisions in the applicable rule. The application does not meet these requirements.

13. An application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made within 3 months of the end of the tenancy. As at 29.3.2023 the application is not validly made. Regardless of whether the end date was

4.11.22 or 8.11.22, the application remains incomplete on the day the 3 months period for making an application under rule 103 expired. The application cannot now be validly made within 3 months of the date of the end of the tenancy. The address of landlord remains outstanding.

14. In making this decision, I have specifically considered the recent Upper Tribunal decision UTA/AP/22/0015, which dealt with the issue of time bar. In that case all necessary information had been provided when the application was first lodged and the UT held that “[12] The application may have been rejected on the basis that it was not made within the time limit stipulated in rule 9 of the 2011 regulations. The basis upon which it can be said that this in turn automatically renders the application frivolous is not immediately apparent. It may have been more appropriate to reject the application – if that were a sound basis for so doing – on the basis of invoking rule 8(1)(c) - that there was good reason to believe that it would not be appropriate to accept the application. A good reason may be in circumstances that the time limit has not been complied with and therefore the application is not competently before the FTT.” I consider in this case that since the application was initially clearly made against the wrong Respondent, Purple Bricks as Letting Agent rather than against the landlord, it was not a valid application when it was first received. Since the up to date landlord address has still not been provided, the application remains incomplete at a time when the 3 months period regardless of whether it was 4.11.22 or 8.11.22 has expired.
15. It would not be appropriate for the FTT to accept an application that is made out with the statutory time frame stated in Regulation 9 (2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 or to accept an incomplete application that does not meet the lodging criteria. The application is thus rejected.

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
29 March 2023