

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 Rules")**

in connection with

460 4/13 Sauchiehall Street, Glasgow, G2 3JU

Case Reference: FTS/HPC/EV/19/0539

Tanya White, 3/3 283 Bilsland Glasgow, G20 9RF ("the Applicant")

**Alison McQuade, 460 4/13 Sauchiehall Street, Glasgow G2 3JU ("the
Respondent")**

1. On 19 February 2019 the Applicant lodged an application with the Tribunal in terms of Rule 103 of the Rules, being an application for an order for payment where a landlord has failed to carry out duties in relation to tenancy deposits. A number of documents were lodged in support of the application including a copy tenancy agreement.
2. A request for further information was issued to the Applicant on 6 March 2019. In terms of the request the Applicant was asked to provide information and evidence confirming when the tenancy came to an end as an application in terms of Rule 103 requires to be lodged within 3 months of the end of a tenancy. The Applicant did not respond. A further request for information in the same terms was issued on 4 April 2019. The Applicant responded but failed to provide the information requested. A further request was issued on 13 May 2019 advising the Applicant that a response was required by 27 May 2019. No response was received.

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, the supporting documentation and correspondence from the Applicant, 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 Procedural 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. The application lodged with the Tribunal seeks an order for payment in terms of the Rule 103 of the Rules and Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 regulations"). Rule 103 states, "Where a tenant or former tenant makes an application under Regulation 9 of the 2011 Regulations, the application must – (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; (b) be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give; (c) evidence of the date of the end of the tenancy (if available); and (d) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant. Regulation 9 of the 2011 Regulations requires an application to be made to the Tribunal no later than 3 months after the end of the tenancy. The Applicant has failed to respond to three requests for further information issued by the Tribunal requiring information and evidence as to the date on which the tenancy came to an end.
7. In the absence of information as to the date upon which the tenancy has come to an end and as the Applicant has failed to respond to requests for further information required by the Tribunal the Legal member therefore concludes 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.

Ms Josephine Bonnar

Josephine Bonnar
Legal Member
7 June 2019