



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/PR/20/0725

Re: 4 Beatty Court, Kirkcaldy, Fife, KY1 2EL ("the Property")

Parties

**Mr William Casey (Applicant)
Mr John Erskine (Respondent)**

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 103 on 2 March 2020. The application was in respect of an alleged failure of the Landlord to protect a tenancy deposit under the **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)**.

2. The application was considered by the Tribunal on 31 July 2020. The Applicant was asked to provide further information as follows:

"Before a decision can be made, we need you to provide us with the following:

- The tribunal has considered the further information you have supplied, in response to the tribunal's requests for further information in relation to your application.*
- You have not confirmed the date that the tenancy ended, but have stated that you moved out on 10 December and handed keys back around one week later.*

Your application to the tribunal was submitted on 25 February 2020 and received by the tribunal's administration on 2 March 2020.

- You have submitted an application in terms of Rule 103, which is an application for payment where a landlord has failed to carry out duties under the Tenancy Deposit Scheme (Scotland) Regulations 2011, in relation to tenancy deposits. Those Regulations place duties on a landlord to lodge a tenancy deposit in a tenancy deposit protection scheme within a specified time period and to provide prescribed information to the tenant. There is a penalty for a failure to comply with the directions which is a maximum of three times the tenancy deposit. An application in terms of Rule 103 must be made within three months of the date upon which the tenancy ended, as that is the statutory time limit for making such an application and if it is made outwith that time, it will be "time-barred" and unable to proceed. That is why you were requested to provide proof of the date on which the tenancy ended as Rule 103 requires that any application is accompanied by evidence of the end date of the tenancy (if available).
- Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk
- You have stated in Section 6 of the Application that you have learned that the landlord did not lodge your tenancy deposit in a scheme. However, in Section 7 of the Application you have stated that you are seeking an order for repayment of part of your tenancy deposit which was not returned to you. This is a different kind of application, which would be made under Rule 111, which is in application for civil proceedings in relation to a private residential tenancy, seeking a payment order.
- You are entitled to make both kinds of application to the tribunal simultaneously, if you wish to do so and if accepted for determination, the applications can be joined for the purposes of further procedure because they relate to the same tenancy and parties.
- Therefore, please provide the following information:
- 1. Please confirm whether you wish to continue with an application in terms of Section 103 and, if so,
 - a. please provide documentary proof that the tenancy ended within three months of the date that the application was made (if available); and
 - b. please provide amended text for Section 7(b) and (c), which relates to the duties under the 2011 Regulations and state what amount of money you are seeking in a payment order (up to a maximum of three times the deposit amount);
- 2. Please confirm whether you wish to make an additional, or alternative, application in terms of Section 111, seeking repayment of part of your tenancy deposit and if so, please complete a second application form for civil proceedings related to a private residential tenancy. (If you only wish to continue with one application, you may amend the present application to proceed under section 111 instead of section 103).
- 3. If you wish to proceed with two separate applications, please confirm whether you wish the applications to be joined for the purposes of further procedure, if they are both accepted for determination.

Please provide the requested information by 12 August 2020 so that the application(s) can be considered by the president, or a legal member, otherwise the application may be refused."

3. The Applicant did not respond. The Tribunal wrote again by email of 25 August 2020 in the following terms:

“Please find attached further copy of letter issued to you on 31 July 2020. If you do not respond to this letter by 8 September 2020 , your application may be rejected.”

4. The **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)** clearly provide in terms of Regulation 9.2 that an application *“must be made no later than 3 months after the tenancy has ended.”* The Tribunal has no discretion to extend the time limit or allow an application late. If an application is received after the expiry of the 3 month time limit in Regulation 9.2 then that is an end of the matter notwithstanding any explanation that may be advanced by an Applicant. The Applicant has failed to provide information confirming the end date of the tenancy and the amount he is seeking. The application cannot proceed without this information.

Reasons for Decision

5. The Tribunal 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;·
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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. '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”.*

7. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Regulation 9.2 provides that such applications should be made no later than 3 months after the tenancy has ended. The Applicant has not submitted information requested to confirm that the application was made in time or what remedy he seeks. The application cannot proceed.

8. Applying the test identified by Lord Justice Bingham in the case of **R v North West Suffolk (Mildenhall) Magistrates Court** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that

there is good reason why the application should not be accepted. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Alan Strain

10 September 2020

Legal Member/Chair

Date