



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/20/2063

Re: SOAB Student Residences, Caird Street, Hamilton, ML3 0EU ("the Property")

Parties

Mrs Linda Webster (Applicant)
Craigie Property Investments Ltd (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 dated 23 September 2020 was received by the Tribunal under Rule 103. 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 following documents were lodged in support of the application:

- i. Application;
- ii. Email exchange between the Parties;
- iii. AT5 dated 20 July 2020;
- iv. Guarantor Form;
- v. Student Questionnaire;
- vi. SOAB Master Lease.

3. The application was considered by the Tribunal on 28 October 2020. The Tribunal requested further information as follows:

“1. You have provided a copy of a blank lease or agreement. Can you please provide a copy of the tenancy you signed if you entered into one? You are claiming for a penalty in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 which only applies if a deposit is not paid within 30 working days of the tenancy beginning. In order to argue the £135 paid by yourself is a deposit as you are suggesting and to enable the landlord to be liable for lodging it in a scheme, you require to show that the tenancy began? Can you therefore provide the signed copy of the agreement for yourself? You would also require to explain when the tenancy ended?”

2. If you wish to claim the £135 paid back either as a deposit or an illegal premium then you require to fill in a separate application under Rule 111 of the Tribunal’s rules for an application for civil proceedings in relation to a private rented tenancy. This is Form F on the Tribunal’s website.

3. You may wish to seek legal advice on this matter from a solicitor or Shelter or the Citizen Advice Bureau”

4. The Applicant responded by email in the following terms:

“Response to question 1 - Did the tenancy begin?”

It can be argued that a tenancy began when the guarantor form and AT5 were returned to SOAB and the deposit paid. The email from SOAB to me read:

“To reserve a room, we ask for paperwork to be signed, returned and a payment of £135. The payment of £135 is your first weeks rent payment then we ask for the further three weeks rent payment to be made when you arrive at the accommodation so that your rent is always 4 weeks in advance.”

I then rang SOAB and was told that they would accept the contract being handed in when my daughter arrived. I then confirmed our conversation thus:

“I have attached the paperwork - it says that the full contract can be printed and handed in when you arrive but everything else is attached Is this OK?”

The signed guarantor’s form and AT5 were also returned to SOAB at that time.

SOAB responded “Isla’s room is now reserved” The contract arguably began therefore on 20th July 2020 when the forms were returned and deposit paid. It was assumed that the lease had been signed and a verbal contract was certainly in place. SOAB had offered the contract, I had accepted and there had been consideration of £135 paid. They would not have reserved the room if they did not believe a contract was in place. I believe that a verbal contract can stand in law and there is considerable evidence around this verbal contract (guarantor form. AT5) which means that the existence of a signed lease is not necessary to prove that the contract began. In fact the lease was not actually signed by myself as I intended to hand in the copy on arrival and was unable to print it out and scan it on 20th July but it is clear that contractual relations were established between SOAB and myself.

The tenancy ended when we informed SOAB that my daughter was not going to attend UWS due to issues arising from the Covid outbreak ie 10th September 2020

2. If you wish to claim the £135 paid back either as a deposit or an illegal premium then you require to fill in a separate application under Rule 111 of the Tribunal's rules for an application for civil proceedings in relation to a private rented tenancy. This is Form F on the Tribunal's website.

I attach application form F and evidence to this email. "

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"*.

5. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Regulation 3.1 provides:

1. Duties in relation to tenancy deposits

3.—(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; and

(b) provide the tenant with the information required under regulation 42.

In this case a sum of £135 was paid as a "reservation fee" in respect of Student Accommodation provided by the Respondent. This sum was equivalent to one week's rent. Upon taking up the accommodation a further 3 weeks' rent would be due so that the tenant was always paying 4 weeks in advance.

The Applicant did not take up the accommodation due to the covid pandemic. This is confirmed by the email exchange between the Parties. The Respondent refused to return the reservation fee paid.

6. The Tribunal consider and find that the tenancy did not commence and, as such, there was no obligation on the Respondent to protect the sum paid of £135 even if this were considered to have been a “deposit”. The Tribunal do not consider it necessary to determine the issue of whether or not the payment of £135 constituted a deposit under the Regulations in the circumstances.

7. 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.

A Strain

13 November 2020

Legal Member/Chair

Date