



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/23/2168

Re: 36 Cow Wynd, Falkirk, FK1 1PU ("the Property")

Parties

**Falkirk Football and Athletic Club Ltd (Applicant)
The Property Place Falkirk Limited (Respondent)**

**Falkirk Football & Athletic Limited (Applicant's Representative)
The Property Place Falkirk Limited (Respondent's Representative)**

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.

Background

1. An application was received by the Tribunal under Rule 103 on 30 June 2023. The application was originally in respect of an alleged failure of the Landlord to protect a tenancy deposit under the **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)** and others.
2. On 5 September 2023 the Applicant lodged a revised application under Rule 103. The revised application included a submission and statement of case which sought repayment of a deposit paid.
3. The application detailed circumstances in which it was asserted the Respondent had agreed to enter a private residential tenancy with one of its players and the

Applicant paying the deposit and rent. The tenancy appears to have ended after a period of 16 Months in or around May 2021.

Reasons for Decision

4. 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."

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. 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".*

6. The 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.

7. The Applicant has submitted its application more than 3 months after the tenancy has terminated. The application is out of time and the Tribunal cannot grant the order sought.

8. In so far as the application seeks repayment of the deposit paid the Tribunal does not have jurisdiction. The Applicant (a limited company) did not and could not possibly occupy the Property under a private residential tenancy as defined in section 1 of **Private Housing (Tenancies) (Scotland) Act 2016:**

1. Meaning of private residential tenancy

(1)A tenancy is a private residential tenancy where—

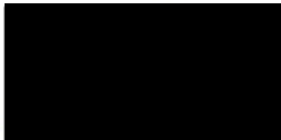
(a)the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b)the tenant occupies the property (or any part of it) as the tenant's only or principal home

9. 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. 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.



Legal Member/Chair

8 September 2023

Date