



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/PR/20/1071

Parties:

Ms Jennifer Ross ("the Applicant")

Ms Jessica Birtley ("the Respondent")

Aberdeen Property Leasing ("the Respondent's Representative")

Re: 7 Beech Road, Westhill, Aberdeenshire AB32 6WR ("the Property")

Tribunal: Mrs A Devanny, Chamber President and Legal member

DECISION

The Tribunal rejects the application by the Applicant dated 7 April 2020 but not received by the Tribunal until after 9 April 2020 being an application made under Rule 103 of The First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 contained in SSI 2017 No 328 ("the Procedural Rules"). The rejection is made under Rule 8(1) (a) of the Procedural Rules.

REASONS

1. This is an application seeking an order for payment arising from a landlord's failure to comply with duties detailed in the Tenancy Deposit Schemes (Scotland) Regulations 2011. Regulation 3 states the duties of a landlord with regard to lodging of a tenancy deposit in an approved scheme.
2. If a landlord fails to comply with the duties in regulation 3 there is a right for the tenant or former tenant to seek a sanction in the form of a monetary payment. Such applications originally were heard by a Sheriff but since 1 December 2017 these applications are considered by the First-tier Tribunal. However, there is a time limit which applies to a former tenant bringing an application. The time limit is specified in Regulation 9 of the 2011 Regulations.

“9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.”

3. In part 8 of the application form the Applicant states that the tenancy end date was 8 January 2020. The application must therefore be received by the Tribunal no later than 8 April 2020. Although the Glasgow Tribunal Centre is closed because of the coronavirus pandemic, checks are being made of mail received there. The envelope in which this application was sent was franked by Royal Mail showing it was at Aberdeen Mail Centre on 9 April 2020. The application was therefore not received by the Tribunal within the time limit specified in Regulation 9(2).
4. The powers of the Tribunal are specified in legislation and this includes, for the purpose of a Rule 103 application, the provisions contained in The Tenancy Deposit Schemes (Scotland) Regulations 2011. These Regulations place a limitation on the Tribunal to consider applications made within the specified period. The Tribunal has no discretion to disregard the time limit or to extend it.
5. Since the application received by the Tribunal is out with the statutory timescale for making an application, it has no prospect of success and is hopeless. That being the case it meets the test of being “frivolous” within the legal context of that term. ‘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”.

6. The application is accordingly rejected in terms of rule 8 (1) (a) of the Tribunal Rules.

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.



Chamber President and Legal Member

Date: 29 April 2020
