



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/CV/23/2639

Re: 22 Whitehall Road, Aberdeen, AB25 2PR ("the Property")

Parties

Mr Omar Odeh, Ms Leen Al Kailani (Applicant)

Mrs Margaret Kelsey (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 rejected on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 111 on 2 August 2023.
2. The application was considered by the Tribunal on 13 October 2023. The Tribunal wrote to the Applicant in the following terms:

"Your emails of 2 and 11 October with attached documents are acknowledged. You have submitted an email from the deposit scheme dated 11th September 2023, which indicated that your dispute regarding repayment of the deposit has been sent to adjudication. The determination of how much of a deposit should be repaid to a landlord and to a tenant respectively at the end of tenancy is a matter for the tenancy deposit scheme's dispute resolution mechanism. In your previous correspondence to the tribunal you indicated that the deposit scheme could not resolve the matter. It appears clear from your most recent emails that the resolution process is now

finalised and you disagree with that decision. You have provided a copy of the final determination. If you are unhappy with that final decision, the deposit scheme has its own internal review process. Please explain why you believe this tribunal has any jurisdiction in this matter given the terms of the Tenancy Deposit Schemes (Scotland) Regulations.”

The Applicant responded by email of 16 October 2023 in the following terms:

“The deposit scheme has clearly (not sure why until now) ignored material evidence in the case showing the pre and post condition of the house cleanliness, which is in my favor (pre conditions are nothing better than post handover) they came back saying the photos were not dated (which isnt true) and not previously uploaded in their portal. I was under the understanding that if we couldnt reach to a resolution I have the option to come to your entity and raise the case. If you do agree that the evidence is not material then please let me know. Im hoping that you can provide a second review that can rule this case, or ask the scheme to re consider the case with the evidences i re submitted”

The Tribunal wrote again by email of 19 October 2023:

“The Tribunal cannot review a decision of the Deposit Scheme. You should make an application to the Deposit Scheme to Review if you have not already done so. Please either withdraw this application or explain on what basis you consider the Tribunal has jurisdiction to deal with your application.”

The Applicant responded by email of 27 October 2023:

“I have already requested a review by the deposit scheme but they responded standing by their initial judgment because the submission of evidence (which is in the form of photos was done initially without showing the dates marked on them, assuming they would request the full inventory photos at the time i checked in from the agents office, i was wrong) i re submitted the photos later but according to them late submission. So they dismissed the case To answer your question I thought that the tribunal is the independent party who would review cases if the landlord and tenant dont agree on a resolution, see extract below -from the supplementary terms of tenancy agreement. I could be wrong.”

Reasons for Decision

3. 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."

4. The Applicant asks the Tribunal to review the Decision of an adjudicator of Safe Deposit Scotland. The Tribunal has no jurisdiction to review a Decision of a deposit scheme adjudicator. The application seeks to proceed under Rule 111 in respect of matters it has no jurisdiction over.

5. The Tribunal considers that it would not be appropriate to accept the application in the circumstances. 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

17 November 2023

Legal Member/Chair

Date