



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/24/2394

Re: 8 Braidburn Crescent, Edinburgh, EH10 6EN ("the Property")

Parties

Mr Gordon Stove (Applicant)

Cornerstone Letting Agency (Respondent)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application is frivolous in terms of Rule 8(1)(a) and is rejected.

Background

1. The application was received by the Tribunal under Rule 110 on 24 May 2024 2023.
2. The application was considered by the Tribunal and further information was requested by email of 13 June 2024. The Applicant was asked to provide the following further information:

"The application under Rule 110 appears to be misconceived. This rule applies where a private residential tenancy has been unlawfully terminated by the landlord issuing a notice to leave or enforcing an eviction order and misleading

the tenant into ceasing to occupy the property. From the documents provided it does not appear that a private residential tenancy has been created because the agreement was not signed by the landlord and you did not occupy the property. Please clarify the basis upon which the application can be accepted.

If the application is to proceed, please provide 1. Details of the period of time that the property was occupied by you. 2. A copy of the notice to leave or eviction order. 3. An amended application form which names the landlord as the respondent as the application cannot be made against the letting agent. An address for the landlord is also required. 4. An explanation as to how you were misled into ceasing to occupy the property. Please respond within 14 days or your application may be rejected. “

3. The Applicant responded by email of 14 June 2024:

“Thank you for your email.

Basically, I had signed a Tenancy Agreement, the landlord's agent took my deposit of £3080 and my family were due to move into the proper on 17 May 2024. We had also paid a removal company to move our furniture.

On 16th May 2024, at 2pm, the landlords agent cancelled our Tenancy Agreement at impossibly short notice.

We were left homeless.

What action can we take to obtain compensation?

We still remain homeless and have had to pay for our furniture to be held in storage.”

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. Rule 110 provides:

Application for a wrongful termination order

110. Where a former tenant makes an application under section 57(2) (wrongful termination by eviction order) or section 58(2) (wrongful termination without eviction order) of the 2016 Act, the application must—

(a) state—

(i) the name and address of the former tenant;

(ii) the name, address and profession of any representative of the former tenant; and

(iii) the name, address and registration number (if any) of the former landlord;

(b) be accompanied by evidence showing that the tenancy was unlawfully terminated; and

(c) be signed and dated by the former tenant or a representative of the former tenant.

The Applicant has not provided a signed Private Residential Tenancy Agreement and has never occupied the Property. He has also not confirmed the identity and address of the Landlord.

7. The Tribunal consider that the Applicant's failure to provide the requested information, the fact that no signed Private Residential Tenancy Agreement has been produced and the fact that he never occupied the Property means that the application is misconceived and has no prospect of success. Accordingly, the application is frivolous. 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

11 July 2024

A Test Member

Legal Member/Chair

Date