



Decision 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/24/4270

Re: Property at 52 Burnvale, Livingston, West Lothian, EH54 6DH (“the Property”)

Parties:

Mr Othniel Ijekhuamhen, 47 Avondale Terrace, Armadale, West Lothian, EH48 3LU (“the Applicant”)

Mr Duncan Lambine, 23 Glenshee, Whitburn, West Lothian, EH47 8NY (“the Respondent”)

1. By application received by the Tribunal on 12 September 2024 the Applicant sought an order against the Respondent under Regulation 9 of the Tenancy Deposit (Scotland) Regulations 2011. The application was made under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. Following receipt of the application the Tribunal wrote to the Applicant on 18 September 2024 requesting further information. The application stated that the applicant never signed a lease or took entry to the property. The documentation provided with the application related to another named individual. A landlord has an obligation to lodge a tenancy deposit within 30 working days of the start date of the tenancy. If no tenancy commenced then the Tenancy Deposit Regulations would not apply. As the application failed to evidence a connection between the Applicant and the property the Tribunal requested that the Applicant provide submissions as to the validity of the application in terms of the Tenancy Deposit Regulations by 2 October 2024. No response was received from the applicant. A reminder letter was issued to the Applicant on 15 October setting a further deadline of 29 October 2024 for the Applicant to

submit the information . The Applicant was advised that in the absence of a response the application may be rejected without further notice. No response was received.

3. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “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”.
4. I consider that this application is frivolous and has no reasonable prospect of success, having regard to the provisions of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). In particular, regulation 9 of the 2011 Regulations states:- “(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.”
5. The Applicant has not identified any legal basis upon which he believes the application can proceed. In the absence of a valid lease or any occupation of the property he has failed to set out how the 2011 Regulations apply. Accordingly, the application cannot be entertained by the Tribunal and must be 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.

Mary-Claire Kelly

Legal Member/Chair

5 November 2024_____
Date