



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/20/0880

Re: 10/7 Kirk Street, Edinburgh, EH6 5EY ("the Property")

Parties

Glenham Property, Glenham Property (Applicant)

Aaron Crow, Mr Mark Findlay, Mr Paul Shaw, Mr Michael Tucker (Respondent)

Glenham Property (Applicant'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 rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 111 on 11 March 2020. The application sought an order for payment in respect of end of tenancy dilapidations. The following documents were enclosed with the application:
 - (i) Private Residential Tenancy Agreement (**PRTA**) commencing 1 November 2018;
 - (ii) Check In Report dated 21 August 2017;
 - (iii) Correspondence between the Parties;
 - (iv) Costings;
 - (v) Check Out Report;

- (vi) Invoices;
- (vii) Previous Short Assured Tenancy.

Reasons for Decision

2. 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."

3. '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. The Tribunal wrote to the Applicant's Representatives by letter of 13 March 2020 asking for further information:

"The following further information is required from you before your application can proceed to the Chamber President for consideration:

- *Applications are required to be signed and dated, I have attached a copy of the application for your convenience.*
- *As addresses for the respondents have not been provided please see the link below and provide an application for each respondent.*

Please reply to this office with the necessary information by 20 March 2020, otherwise the application may be rejected."

5. No response was received. The Tribunal wrote again on 8 July 2020 requesting:

"Before a decision can be made, we need you to provide us with the following:

1. *As previously advised, if you do not know the addresses of the Respondent's please complete an application for service by advertisement for each Respondent. When submitting these forms, please provide evidence of*

attempts to obtain an address, such as a trace carried out by a Sheriff Officer or tracing agent.

2. *Please provide a signed and dated application form.*
3. *The Landlord's appear to be Gavin and Duncan Durbin. Please confirm if you wish to amend the application to reflect this position.*

Please reply to this office with the necessary information by 22 July 2020. If we do not hear from you within this time, the President may decide to reject the application."

No Response was received.

6. In light of the failure to provide the information required the Tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The application could not proceed against the Respondent without the information requested. The Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that the failure to provide the required information constituted good reason why the application should not be accepted. 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

24 August 2020

Legal Member/Chair

Date