



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/20/1570

Re: 50 Westend Drive, Bellshill, ML4 3AS ("the Property")

Parties

Mrs Jessica Walker (Applicant)
Mr David C Gemmell (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 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 70 on 23 July 2020. The application sought an order for payment in respect of the landlord's failure to provide information.

2. On 18 November 2020 the Tribunal emailed the Applicant in the following terms:

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

As per the tribunal's letter of 20 October 2020, please provide the following:

- Your application is stated to be under Rule 70. You state that you are seeking an order for payment in respect of the landlord's failure to provide information. The Tribunal note that the tenancy commenced on 4 July 2015. As such the requirement to provide information is regulated by section 30A of the Housing

(Scotland) Act 1988. Failure to provide such information is a criminal offence. Please provide your written submissions on why you consider the Tribunal has jurisdiction to deal with your application.

Please reply to this office with the necessary information by 2 December 2020. If we do not hear from you within this time, the President may decide to reject the application.”

3. No response was received.

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. Failure by a landlord to provide information with regard to an assured tenancy is regulated by section 30A of the Act. Failure to provide such information is a criminal offence. The Tribunal has no jurisdiction and could not grant the order sought by the Applicant.
7. In light of the lack of response from the Applicant and the terms of section 30A 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 Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that the failure to provide necessary 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

11 December 2020

Legal Member/Chair

Date