

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of
Procedure 2017 ("the Procedural Rules")

in connection with

1/2, 5 Clifford Place, Ibrox, Glasgow, G51 1NS ("the Property")

Case Reference: FTS/HPC/CV/18/1571

Mr Alistair Ross ("the applicant")

Mr Michael Joseph Robertson ("the first respondent")

Mr Steven John Robertson ("the second respondent")

1. On 22 June 2018, an application was received from the applicant. The application was made under Rule 70 of the Procedural Rules being an application for civil proceedings arising out of an Assured Tenancy. The applicant enclosed a number of documents with the application, including:-
 - Copy Tenancy Agreement
 - Copy Guarantee Agreement
 - Copy Rent Account Statement

DECISION

2. I considered the application in terms of Rule 8 of the 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;

- (b) the dispute to which the application relates has been resolved;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or*
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

(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. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected insofar as it relates to the second respondent on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules. The application will be allowed to continue insofar as directed against the first respondent.

REASONS FOR DECISION

4. The Tribunal's jurisdiction is fixed by statute. Historically it has had jurisdiction to determine applications arising out of the Housing (Scotland) Act 2006 and the Property Factors (Scotland) Act 2011. In December 2017, the jurisdiction was extended to include the functions and jurisdiction previously enjoyed by the sheriff courts in relation to actions arising from regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984, a Part VII contract within the meaning of section 63 of the meaning of section 63 of the 1984 Act, or assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988. At the same time, the Tribunal took on jurisdiction to determine applications arising out of the new Private Residential Tenancies created under the Private Housing (Tenancies) (Scotland) Act 2016. Most recently, the jurisdiction has extended to include actions against letting agents where it is alleged that the Letting Agent Code of Practice has been breached.
5. This application proceeds under Rule 70, but is actually two distinct actions combined into one. The first, directed against the first respondent, is an action arising out of an Assured Tenancy insofar as it seeks payment of sums allegedly due under that agreement. There is no question

that this is an action that falls within the Tribunal's jurisdiction under section 16 of the Housing (Scotland) Act 2014. The second, directed against the second respondent, is an action arising out of a guarantee agreement whereby the second respondent guaranteed the performance of the first respondent of his obligations under the tenancy agreement. However, I do not consider that the circumstances of this second case truly arise out of an Assured Tenancy Agreement.

6. In *Sauchiehall Street Properties One Ltd v EMI Group Ltd*, 2015 Hous. L.R. 24, the landlord of commercial premises in Glasgow sought payment from the guarantor of its tenant. The defenders pled that the court had no jurisdiction as the action did not have as its object the tenancy of immovable property. In accepting that argument, Sheriff Reid states at paragraph [47]:-

"Firstly, the parties are not landlord and tenant. Instead, the parties are creditor and debtor under a guarantee. Secondly, the aim or subject matter of the agreement in question (being the contract upon which the action is founded) is not a tenancy of immovable property at all. It is a guarantee. Thirdly, the object of the proceedings is not to enforce (or to seek substitutional redress for the alleged breach of) an obligation owed to a landlord by a tenant under a lease but, rather, to enforce an obligation owed to a landlord by a third party debtor under a guarantee. In other words, the object of the proceedings is "only indirectly related"... to a tenancy of immovable property, in that the guarantee relates to the obligations of a tenant under a lease."

7. Whilst this case involves a guarantee of obligations under an assured tenancy, I consider that the facts are analogous to *Sauchiehall Street Properties One Ltd*. The parties here are also creditor and debtor under a guarantee. The aim or subject matter of the agreement is a guarantee, not a tenancy. The object is to enforce an obligation owed to the applicant by the respondent under a guarantee.
8. It follows that the Tribunal does not have jurisdiction to determine the action directed against the second respondent, and it is for that reason that I believe that it would not be appropriate to accept the application insofar as directed against the second respondent.
9. Accordingly, for this reason, this application must be rejected insofar as directed against the second respondent upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.
10. I will, however, allow the application insofar as directed against the first respondent to be accepted for determination by the First-tier Tribunal.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Andrew Upton

Andrew Upton

Legal Member

2 August 2018