



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/20/1489

Re: 31 McNaughton Drive, Kilmarnock, KA3 7NF ("the Property")

Parties

Mrs Margaret Allan (Applicant)

Mr Ryan Storrie (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 dismissed 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 1 September 2020.
2. The application was considered by the Tribunal and further information was requested by email of 10 September 2020. The Applicant was asked to:

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

1. *There is reference to a deposit of £594 in the tenancy agreement, has this been recovered; and why has that sum not been sought by you and deducted from the sum sought in this application?*

2. Please provide evidence of the sheriff officers costs that you are seeking (please note that you will be required to show why in law the tribunal has jurisdiction to grant any such order for this sum).

3. In support of the rent arrears, please provide a copy of the payment order already obtained, together with the tribunal decision. Please also provide a rent statement for current rent arrears you seek; showing the period when you state arrears are due (the rent statement should show dates when rent was due, rent was paid, and total arrears outstanding).

4. The invoices submitted are addressed to a Mr Hay? On what basis are you entitled to seek an order for payment, when the invoice has been made in the name of Mr Hay?

5. The Invoices include a Baillie's invoice for decorating and B&Q invoices. However repayment for these sums has not been sought in your application. Please either amend your application to include these sums, or confirm that you wish to withdraw those documents.

6. There are no invoices for cleaning totalling £39.67. Please provide invoices/vouching to support this claim.

Please reply to this office with the necessary information by 24 September 2020. If we do not hear from you within this time, the President may decide to reject the application."

3. The information was not received. The application was considered by the Tribunal and the Tribunal wrote by letter of 14 October 2020 requesting a response. 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. Rule 111 of the Tribunal Rules requires:

Application for civil proceedings in relation to a private residential tenancy

111. Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

(a)state—

(i)the name and address of the person;

(ii)the name and address of any other party; and

(iii)the reason for making the application;

(b)be accompanied by—

(i)evidence to support the application; and

(ii)a copy of any relevant document; and

(c)be signed and dated by the person.

The applicant failed to produce necessary information and evidence to support the application. The application could not proceed.

7. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is 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.

20 November 2020

Legal Member/Chair

Date