



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: reference FTS/HPC/CV/21/0349

Re: 73 Erskine Street, Alva, Clackmannanshire, FK12 5LU ("the Property")

Parties

Mr Robert Muir (Applicant)

Martin & Co Stirling Lettings & Estate Agents (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 16 February 2021.
2. The application was considered by the Tribunal and further information was requested by letter of 3 March 2021. The Applicant was asked to:

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

- 1) *Please provide a copy of the written tenancy agreement.*
- 2) *Your application appears to be one for payment of damages. Please confirm if that is correct, and if so, explain the basis of the calculation of the amount you claim.*
- 3) *If you seek to claim damages for loss sustained by you, you require to explain the legal basis upon which you say that your landlord's letting agent is liable, rather than your landlord.*
- 4) *If your complaint is about the manner in which your landlord's letting agent has dealt with*

your complaint, then you may wish to bring a claim in terms of Tribunal rule 95, if you assert that the letting agent has breached the letting agent code of practice. 5) The pictures of computer screen shots you have provided are too small to be legible. Could you please provide larger copies where the text on the screen can be read.

Please reply to this office with the necessary information by 17 March 2021. 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 29 March 2021 requesting a response:

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

We refer to our letter to you dated 3rd March 2021, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 7 days of this letter or the Tribunal may well reject your application.

Please reply to this office with the necessary information by 05 April 2021. If we do not hear from you within this time, the President may decide to reject the application.”

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.

Alan Strain

19 April 2021

Legal Member/Chair

Date