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/PR/22/0818

Re: 18 Tanera Court, Falkirk, FK1 2PQ ("the Property")

Parties

Mr Matthew Oliver (Applicant)

Mr David Moncur, Mrs Diane Moncur (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 103 on 18 March 2022. The application was in respect of an alleged failure of the Landlord to protect a tenancy deposit under the **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations***)*.

2. The application was considered by the Tribunal on 24 March 2022. The Applicant was asked to provide further information as follows:

"Before a decision can be made, we need you to provide us with the following: 1. We normally require an address for the Respondent that is not a care of address please advise if you have a home address for the landlords? You may be able to obtain this from the letting agent or if you do not have an address you can apply to serve the application by service by advertisement but this does require you to show us that you

have tried to trace the applicant by using a tracing agent or sheriff officer and applying using the service by advertisement on our website. Please advise whether you have an alternative address or please provide the service by advertisement form with the relevant evidence the landlord cannot be traced? 2. You have not provided many details in the form of when you paid the deposit or how much it was and why you believe it is not lodged in a scheme. Can you please advise how much the deposit was; when you paid it to the landlord or their agent and provide any evidence of this if you have it and provide details of why you do not think it has been lodged in a tenancy deposit scheme? Please respond within 7 days. Please note that an application under Rule 103 must be lodged with the Tribunal, together with all required information and documents, no later than 3 months after the tenancy has ended so please respond as soon as possible so that your application can be considered further."

3. The Applicant did not respond. The Tribunal wrote again by letter of 5 April 2022:

"Before a decision can be made, we need you to provide us with the following: • In order for the Tribunal to be able to process your application further please provide the information/documentation requested previously. The former request is attached for ease of reference. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that applications under The Tenancy Deposit Schemes (Scotland) Regulations 2011 cannot be made later than 3 months after the tenancy has ended. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, otherwise the application will have to be rejected. Please reply to this office with the necessary information by 12 April 2022. 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. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Rule 103 is in respect of applications where it is alleged the landlord has failed to protect a tenancy deposit. The Applicant has failed to provide necessary information. The Tribunal cannot grant an order under Rule 103 without the information requested.

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

14 April 2022

_____   _____
Legal Member/Chair   **Date**