

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/1800

Re: Flat 2/2, 697 Cathcart Road, Glasgow, G42 8UA ("the Property")

Parties:

Mr William Murphy ("the Applicant")

First Lets ("the 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 103 on 10 June 2019. The application asserted that the deposit had not been repaid or protected as required under the Tenancy Deposit Scheme (Scotland) regulations 2011 (Regulations). The following documents were enclosed with the application:
 - (i) AT5 dated 21 November 2017;
 - (ii) Notice to Leave dated 14 February 2019; and
 - (iii) Proof of payment of deposit.

Reasons for Decision

2. 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."

3. '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"*.
4. The Tribunal wrote to the Applicant by letter of 26 June 2019 asking for further information:
 - (a) The registered landlord was Louise Duguid and the application should proceed against her and not the letting agents. The Applicant was to consider if he wished to proceed with an application for recovery of his deposit or for failure to protect the deposit;
 - (b) To provide a copy of the tenancy agreement; and
 - (c) The AT5 suggested there was a joint tenant so he was asked to confirm the position.

The Tribunal asked for a response 10 July 2019.

5. No response was received. The Tribunal wrote again by letter of 26 July 2019 and gave the Applicant until 5 August 2019 to respond. Once again no response was received.
6. In light of the failure to respond 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 application could not proceed against the letting agents. The Tribunal had no power to grant the order sought against them. The Tribunal considered that the application was frivolous, misconceived and had 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

Legal Member/Chair

15 August 2019

Date