



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/20/1892

Re: 36e Dock Street, Dundee, Angus, DD1 3DR ("the Property")

Parties

Mr Ryan McDonald (Applicant)

Mr Kwai Fook Chan (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 7 September 2020. 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 10 September 2020. 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:

☐ *Please advise if you wish to add the joint tenant, Connie Reid, as joint applicant, and provide contact details for her. If not please explain why the Applicant is entitled to pursue the application in relation to a deposit paid by Connie Reid.*

☐ *An application under the Tenancy Deposit Regulations allows a tenant to seek a payment order of up to three times the deposit paid, for failure by the landlord to lodge the deposit in an approved scheme. An application for repayment of the deposit would have to be made separately, under Rule 111. Please confirm that you are seeking an order under Rule 103 and confirm the amount of money being sought.*

☐ *Rule 103 requires evidence of the end date of the tenancy. The copy text messages you have provided do not appear to do this. You have indicated that the tenancy ended on 8 August 2020. Please provide evidence of this, if available.*

Please note that an application under Rule 103 must be submitted to the Tribunal with all required information and documents, within 3 months of the tenancy coming to an end. Please ensure that you provide the requested information immediately or your application could be time barred.

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 Applicant did not respond. The Tribunal wrote again by letter of 13 October 2020 in the following terms:

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

1. Please provide the information requested in the Tribunal's letter to you of 10 September 2020.

Please reply to this office with the necessary information by 27 October 2020. If we do not hear from you within this time, the President may decide to reject the application."

4. The Applicant did not respond.

Reasons for Decision

5. 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."

6. '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"*.

7. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Rule 103 provides for certain information to be lodged with an application:

Application for order for payment where landlord has not paid the deposit into an approved scheme

103. Where a tenant or former tenant makes an application under regulation 9 (court orders) of the 2011 Regulations, the application must—

(a)state—

(i)the name and address of the tenant or former tenant;

(ii)the name, address and profession of any representative of the tenant or former tenant; and

(iii)the name, address and registration number (if any) of the landlord;

(b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c)evidence of the date of the end of the tenancy (if available); and

(d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

Evidence of the end date of the tenancy has not been provided. Furthermore, the Applicant has not provided additional information required by the Tribunal.

8. 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

6 November 2020

Legal Member/Chair

Date