



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/20/0185

Re: 16 Woodend ("the Property")

Parties:

Mrs Marie Sharp ("the Applicant")

Mr Robert Sharp ("Applicant's Representatives")

Homesure Portfolio Management ("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 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 20 January 2020. The Applicant seeks a remedy in respect of the landlord's failure to protect her tenancy deposit under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (**Regulations**). The following documents were provided:
 - (i) Safe Deposit Scotland Summary;
 - (ii) Landlord registration Details for the Property;

(iii) Photographs of the Property.

2. The Tribunal considered the application and wrote requesting further information by letter dated 29 January 2020. The Applicant's Representative was asked:

- (a) To provide a copy of the tenancy agreement;
- (b) Confirmation of the commencement and termination of the tenancy;
- (c) To confirm on what basis the application could be made against the Letting Agents.

The Applicant's representative was asked to provide the information by 12 February 2020 failing which the application may be rejected.

The Applicant's representative responded by email of 29 January 2020 providing copy Short Assured Tenancy, Notice to Quit and Section 33 Notice. The Applicant's representative also informed the Tribunal that he considered the application should proceed against whoever lodged the deposit with Safe Deposit Scotland as being liable. In this case, that was the Letting Agent.

3. The Tribunal considered the position and wrote again requesting confirmation of the termination date of the tenancy and asked for the legal basis upon which the application could proceed against the Letting Agent by letter of 11 February 2020. The Tribunal gave until 25 February 2020 to respond.

The Applicant's Representatives wrote by email of 16 February 2020 stating that new laws were passed in 2012 which said that Letting Agents had 1 year to put tenancy deposits into an approved scheme failing which they would incur a penalty of 3 times the deposit.

4. The application was considered again by a Legal Member on 27 February 2020.

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 the Regulations. The obligation under Regulation 3 is for the landlord to protect the deposit. The remedy under Regulation 9 is in respect of the landlord's failure to protect the deposit. It is not possible to pursue the Letting Agent under the Regulations. The Tribunal could not grant an order in the circumstances.

8. In light of the above reasons the Tribunal cannot grant the order sought. 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.

27 February 2020

Alan Strain

Legal Member/Chair

Date