



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/23/0387

Parties

Miss Mandy Simpson (Applicant)

Mr Iain Smith (Respondent)

UNKNOWN, UNKNOWN (House)

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 February 2023. 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 9 February and 1 March 2023. 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: We refer to our previous letter of 9th February 2023 and note we do not appear to have had a response from yourself. If you wish to proceed with your application which has been made under Rule 103 of the Tribunals rules then please respond to the following outstanding matters:- 1. Please provide a copy of the tenancy agreement. 2. Please provide the address of the property to which the application relates as this is not stated on the application form. 3. It would appear that the tenancy deposit may have been lodged in a tenancy deposit scheme. Please confirm if that is the case. If so, the Tribunal would only be able to consider the case under Rule 103, which is a claim by a tenant that the landlord has not lodged the deposit in a tenancy deposit scheme or has lodged it late if the deposit was paid more than 30 days before it was lodged. If the deposit was not lodged or lodged late please confirm this and please advise when the tenancy ended as any claim under this rule must be lodged within 3 months of the end of the tenancy and an application is not competent after this date. 4. Please also provide any evidence that shows payment of the deposit to the landlord and when payment was made. 5. You have also mentioned that you wish to be repaid the tenancy deposit and rent that you claim is overpaid. Please advise if this is in addition or instead of the Rule 103 application. If you wish to make a claim for payment of the deposit and or overpaid rent this needs to be claimed in a separate application and you should make this application on a Form F. Please confirm what you wish to apply for and please provide a separate form F if necessary and advise if you wish to continue with the claim under Rule 103. 6. Again if you wish to claim for the return of the deposit you will have to confirm it was never paid into a scheme and therefore was not adjudicated on by the scheme administrators. If it has been adjudicated on then you will not be able to reclaim the deposit through the tribunal. 7. If you are claiming overpaid rent, please also provide evidence showing you have paid the rent and when and if you have any evidence that the same payment was made via benefits. 8. The whole text inserted at paragraph 7b cannot be read. Please provide the additional information on a separate piece of paper. Please let us have your response as soon as possible and no later than within 10 days. Please note that as stated above any claim under Rule 103 must be made within 30 days of the end of the tenancy failing which it cannot be considered. Please note this time limit does not apply to claims for repayment of money. Please reply to this office with the necessary information by 10 March 2023. If we do not hear from you within this time, the President may decide to reject the application."

3. The Applicant did not respond to either letter.

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."

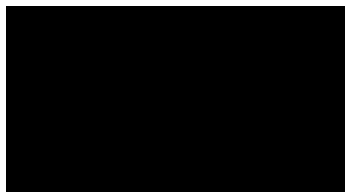
5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *"What the expression means in this context is, in my view, that the court considers the application to be 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.



16 March 2023

Legal Member/Chair

Date