

Decision with Statement of Reasons of H Forbes, 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/22/2118

Re: Flat 0/1, 44 St Ninian Terrace, Glasgow, G5 0RJ ("the Property")

Parties:

Ganesh Ramanathan ("the Applicant")

Doli Patel ("the Respondent")

Tribunal Member:

Ms H Forbes (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. A partial application was received by the Tribunal under Rule 103 on 30th June 2022. The application form was not attached. Following an email from the Tribunal administration to the Applicant on 1st July 2022, the application form was attached.
2. The Applicant provided copy lodger agreement between the parties, correspondence with (i) landlord registration, (ii) tenancy deposit scheme, and (iii) Shelter Scotland, notice of repair, and email communication between the parties.
3. The application was considered by the Tribunal and further information was requested by letter dated 5th July 2022, as follows:

- An application under Rule 103 must be submitted no later than 3 months after a tenancy has ended. It appears that your tenancy ended on 3 March but the application was not received by the Tribunal until 1 July. The Tribunal does not have the discretion to extend the time limit. Please confirm the date that the tenancy ended and advise if you wish to withdraw the application.

- An application under Rule 103 can only be used to seek compensation for a failure by a landlord to lodge the deposit in an approved scheme. If you are seeking other payments, such as the return of the deposit, you must submit an application under Rule 111 with all required documents. Please confirm if you wish to do so and submit the application using Form F on the Chamber website.

The Applicant was given until 19th July 2022 to respond, failing which the application may be rejected.

4. By email dated 5th July 2022, the Applicant replied as follows:

The tenancy ended on 31 March 2022. The reason for the delay is that initially I was struggling hard to find the landlord's address to serve notice as she has not mentioned her address anywhere in the agreement. Instead she has given only the lodger agreement which has the same address as the property that I was residing in. So I was seeking advice from the Citizens Advice Bureau, written confirmation from the landlord registration council, deposit schemes and was looking for their guidance from solicitors and all these have caused the delay. I sincerely apologize for the delay. I would like you to proceed with the application and do not want to withdraw. I believe i have submitted the application on 30 June 2022

5. The application was considered by the Tribunal and further information was requested by email dated 7th July 2022, as follows:

Thank you for your response. Unfortunately your e-mail and some enclosures were received on 30th June, however some of the required details to allow an application to be accepted timeously include the applicant and respondents name and address and these were not both apparent from the e-mail, but were supplied the following day when you sent your application form. This means that the application is out of time only being received in full on 1st July outwith the 3 month period. Please note that you can still apply for the return of your deposit which is not subject to this time limit by applying on form F. Please now advise if you wish to withdraw this application under Rule 103 or please advise why you believe it can be accepted.

6. By email dated 8th July 2022, the Applicant replied as follows:

My sincere apologies for the delay and please find below the reason for the delay and request you to accept the application. The landlord has not given her correspondence address anywhere in the agreement or she was not ready to reveal her whereabouts. So I have taken this issue up with the Citizens Advice Bureau, who had advised me to reach the Landlord registration council to get the landlord's address. However the council has responded stating the landlord has not registered and they will reach out to her instructing them to register to the council and pay the fees. Later they confirmed that the landlord just paid the registration fees and mentioned there are no tenants letting the property so her address details have not been added to the application.

When I reached CAB with the response from the Landlord registration council they had scheduled an appointment to discuss further (on the options to how to trace the landlord address / requesting sheriff officer to trace etc.) before taking the case to the first tier tribunal. Unfortunately two of my appointments with CAB got cancelled due to staff shortage. Having been clueless about the next step I have to wait until my third appointment where they asked to seek solicitor advice to take it to the tribunal. Please refer to the attachment from the CAB advising why this case has to be accepted under this circumstance rather than withdrawn.

I have reached out to multiple solicitors (from Law society of Scotland) but most of them turned down my application stating they do not involve in dispute resolution. Without the address I am helpless to complete the application and it is already high time to submit the same so I decided to submit the last day (30 June 22) with available evidence. All these have caused the delay and I sincerely apologise for the same. Having suffered a lot due to the landlord's pressure and stress that she has given I could believe the legal system should provide the correct judgement so as to prevent her from doing such illegal things in the future.

The judgement from this case would certainly be a lesson for her and at the same time it would be the last rays of hope for tenants like us. So once again I kindly request you to consider the application and provide justice.

7. The Applicant included a letter from Citizens Advice Bureau confirming that advice was first sought on 12th May 2022, with an appointment on 16th June 2022, the delay being due to a combination of Covid-related staff absences and pressure of work. The CAB submitted that the Tribunal should take the exceptional circumstances into account when considering whether to hear the case as it would be in the interests of justice.
8. The application was considered further on 11th July 2022.

Reasons for Decision

9. 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.

10. '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".*
11. The application is time-barred in terms of Regulation 9(2) of The Tenancy Deposit Schemes (Scotland) Regulations 2011, which requires that an application be made within 3 months of the end date of the tenancy. Rule 103 of the Chamber Procedural Rules provides:

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.

12. Rule 5 of the Chamber Procedural Rules provides:

Requirements for making an application

5.—*(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

13. In this case, the Tribunal received some documents on 30th June 2022, however, the application form, which purported to contain the information required by Rule 103, was not lodged until 1st July 2022. This was one day beyond the three month period allowed for in Regulation 9.

14. 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. It would not be appropriate to accept the application. 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.

Helen Forbes

Legal Member

11th July 2022
Date