



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/EV/22/1812

Re: 9 Albert Buildings, Main Street, Westfield, EH48 3BX ("the Property")

Parties:

Colin Buchan ("the Applicant")

Heather Liddell ("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. The application form was received by the Tribunal under Rule 69 on 10th June 2022.
2. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant by letter dated 29th June 2022, requesting a response by 13th July 2022, as follows:
 1. Please provide a copy of the tenancy agreement. Should you not have received a tenancy agreement please provide information about the start date of the tenancy, the terms of the tenancy, the end date of the tenancy and information of who occupied the tenancy.
 2. Please provide the landlord registration number of the landlord.

3. Please provide a calculation of the amount you seek by way of the application. For each item please provide vouching and state on what basis you are seeking the specific amount.

4. Please provide a copy of the notice served on you.

5. It is not clear whether or not you have made the application under the correct rule. This can only be established once you provide more information about the tenancy. Should the tenancy have been a Short Assured or Assured Tenancy please provide information about the difference in value between the property with and without a sitting tenant.

Please note that without the above the application may have to be rejected.

No response was received.

3. The application was considered by a legal member of the Tribunal and by letter dated 12th August 2022, a further opportunity to provide the information requested was given, with a response requested by 26th August 2022, failing which the application may be rejected. The following further request for information was also made:

Your application appears to be made under rule 69 of the tribunal rules which relates to claims for damages from unlawful eviction. If that is the case then you will need to provide details of the actual amount of damages you are claiming.

There is a specific statutory formula for the calculation of such damages set out in section 37 of the Housing (Scotland) Act 1988 and you may wish to consider obtaining independent legal advice on the matters raised in this request.

We write to advise you that if you do not provide the requested information by 26 August 2022 then it is likely the tribunal will take a decision to reject the application.

4. By email dated 24th August 2022, the Applicant responded as follows:

The following are the descriptions and amounts of damages relating to my claim below:

The cost of emergency temporary accommodation provided by West Lothian Council from 20 December 2021 to 13 March 2022 at a cost of £98.08 per week - £1569.28

Storage costs for my belongings provided by Red Squirrel Storage from 5 October 2021 to 13 March 2022 - £660.73

Diesel fuel costs from staying in Peebles temporarily with my mother to my work by car in Livingston from 12 October 2021 to 20 December 2021 - £600

Early termination of my internet at my property at 9 Albert Buildings Main Street Westfield EH48 3BX - £300

5. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant by letter dated 29th September 2022, requesting a response by 13th October 2022, as follows

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

1. Please provide the documents previously requested.
2. Thank you for the details you have provided regarding your claim. However, as previously requested, please now provide the calculation in terms of S 37 of the Housing (Scotland) Act 1988 as requested as part of a valid application in terms of rule 69 (a) (iv) of the rules of procedure. Without this the application remains incomplete and will have to be rejected.
3. Please provide a description of the actions of the landlord which you consider as the basis of the application. If you have not received a Notice to Quit please explain what caused you to leave the property.

Please reply to this office with the necessary information by 13 October 2022. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

6. By email dated 16th November 2022, a further copy of the letter of 29th September 2022 was issued to the Applicant, allowing a further period of 14 days for a response, failing which the application may be rejected. No response was received.
7. The application was considered by a legal member on 15th December 2022.

Reasons for Decision

8. 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."

9. '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"*.
10. Rule 69 provides that the Applicant, when making an application, must state details of the amount of damages sought based on section 37 of the Housing (Scotland) Act 1988 in respect of the loss of the right to occupy the premises. Without this, the application remains incomplete. The Applicant has also failed to provide any details in relation to the type of tenancy, so it is not clear whether an application under this rule is competent. The Applicant has failed to provide supporting documentation as requested..
11. 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. 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/Chair

15th December 2022
Date