



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/22/3096

Re: 295 Hawkhill G/L, Dundee, DD2 1DN ("the Property")

Parties:

Mr Kacper Rosiak ("the Applicant")

Braehead Lettings Ltd. ("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. An application was received by the Tribunal under Rule 103 on 29th August 2022. The Applicant was seeking return of his tenancy deposit and compensation for failure to lodge the tenancy deposit with an approved tenancy deposit scheme as required by The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant lodged a tenancy agreement in respect of the Property, tenancy application paperwork and evidence of payment of the deposit.
2. The application was considered by the Tribunal and further information was requested by letter dated 31st August 2022, as follows:
 1. You have named the letting agent as the Respondent. A Rule 103 application must be made against the landlord. Please provide an amended page of the application form ensuring that the correct

Respondent is included together with their current address, which cannot be a care of address. You may wish to ask the letting agent for the landlord's address. If you are unable to obtain an address, you can apply for service by advertisement, however, you must show what attempts have been made to find the address by means such as sheriff officers or a tracing agency.

2. Please provide evidence the deposit was not lodged. This may be evidence from the tenancy deposit schemes or any other evidence that indicates this is the case.

3. The tenancy agreement shows a joint tenant. Please let us know if the joint tenant wishes to be a joint applicant.

4. Please confirm the exact end date of the tenancy. You should be aware that we must have a complete application with all the required information within three months of the tenancy end date, or the application will be time-barred.

5. You mention recovery of the tenancy deposit. That will require a further application under Rule 111, as Rule 103 is only for failure to lodge the deposit. Please see our website for the correct form, should you wish to make a further application. There is no three month time limit for a Rule 111 application.

6. You have provided a bank statement without removing other personal information. All information will be shared with the Respondent. Please confirm if you wish to remove the bank statement and provide another copy with all information that is not connected to the case removed.

3. The Respondent was asked to respond by 7th September 2022, failing which the application may be rejected. No response was received.

4. By letter dated 9th September 2022, the Applicant was asked to provide the information above, by 23rd September, failing which the application may be rejected. No response was received.

5. By letter dated 30th September 2022, the Applicant was asked to provide the following:

1. Please provide a response to the two previous requests for information within 7 days or it is likely that the application will be rejected. Please note that the application cannot be accepted in its current condition as you appear to have named the letting agent and not the landlord and have not provided the date on which the tenancy ended.

2. Please note that an application under Rule 103 must be lodged with all required information and documents within 3 month of the tenancy ending or it will be time barred. It is the Applicant's responsibility to

adhere to this time limit which will operate regardless of any time limit imposed by the Tribunal for a response to correspondence.

6. The Respondent was asked to respond by 7th October 2022, failing which the application may be rejected. No response was received.
7. The application was considered further on 10th October 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;·

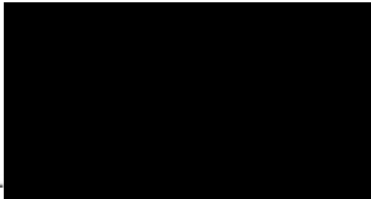
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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. In terms of the Chamber Procedural Rules, a Rule 103 application must be brought against the landlord, and the landlord's name and address must be provided. In this case, the Respondent is the letting agent. This is not competent, and the application cannot proceed against the letting agent. The Tribunal also requires to know the end date of the tenancy, even if no evidence of the end date is available, in order to assess whether the application is time-barred.
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. 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.

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Legal Member/Chair

10th October 2022
Date