

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/0260

Re: 16/3 Orwell Place, Haymarket, Edinburgh, EH11 2AE ("the Property")

Parties:

Ms Katie Watson ("the Applicant")

MGM Letting ("the Respondent")

Mr Lee Cheatley (Applicant's representative)

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 rejected 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 Rules 50 and 67 on 25 January 2019. The application enclosed copies of deposit documentation, images, statement of charges and bank charges.
2. The basis of the application appears to be a dispute about proportion of the deposit to be repaid to her, costs incurred as a consequence of her moving out of the Property due to its condition, impact on her health and Property unfit to live in.

3. The Tribunal considered the application and issued a letter of 19 February 2019 seeking clarification of the Rules relied upon and information to support the application. The Applicant's representative replied by email of 28 February 2019 in which it was stated Rule 50 applied due to the dispute about the allocation of the deposit and Rule 67 applied due to the Applicant having to move out, find temporary accommodation and associated costs due to the condition of the Property.

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. Rule 50 of the Tribunal Procedure Rules applies in specific circumstances surrounding an appeal against a decision of a landlord under section 64 of the Housing (Scotland) Act 2006. None of the circumstances contained within the application fall within the ambit or scope of Rule 50.
7. Rule 67 of the Tribunal Procedure Rules applies to applications under section 22(1) of the Housing (Scotland) Act 1988 for removal costs. Section 22 provides:

Payment of removal expenses in certain cases.

(1)Where the First-tier Tribunal makes an order for possession of a house let on an assured tenancy on Ground 6 or Ground 9 in Schedule 5 to this Act (but not on any other ground), the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the house.

(2) Any question as to the amount payable by the landlord to a tenant by virtue of subsection (1) above shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the First-tier Tribunal .

8. No order for possession of the Property is alleged to have been made. Instead the basis of the application is that the Applicant required to leave the Property due to its condition.
9. It is evident that this application is irrelevant as a matter of law. 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 given that the application is irrelevant as a matter of law. 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.

Alan Strain

Legal Member/Chair

7 March 2019

Date