



**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/21/2843**

**Re: 4/8 Salmond Place, Edinburgh, EH7 5ST ("the Property")**

**Parties**

**Mr Linfan Cai (Applicant)**

**Mr Bryan Anderson (Respondent)**

**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 16 November 2021. 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 19 November 2021. The Applicant was asked to provide further information as follows:

*"An application under Rule 103 must relate to a failure by a landlord to lodge a tenancy deposit in an approved tenancy deposit scheme. It cannot be used to recover the deposit. If you wish this application to proceed you will require to re-submit the application and refer only to Rule 103. You will also require to state that you are seeking an order under the tenancy deposit regulations of up to three times the deposit."*

*Please also note the following:*

- 1. The regulations only apply to certain types of tenancy and exclude tenancies granted for holiday purposes. Please confirm the nature of your tenancy.*
- 2. As before, an actual address is required for the Respondent or an application for service by advertisement.*
- 3. You should contact the three tenancy deposit schemes – Safe Deposit Scotland, Letting Protection Service and My Deposit Scotland to verify whether your deposit was lodged.*
- 4. Again, a copy of the tenancy should be provided or as much detail as you can about the tenancy.*
- 5. Please provide evidence that a deposit was required/paid.”*

3. The Applicant responded by email of 21 November 2021 in the following terms:

“Thank you for your reply.

I would like to provide you some backgrounds below:

- I don't have a proper tenancy agreement as I thought Edlets.com is a legit letting company

in Edinburgh before I made the booking with them.

- It is just a simple booking confirmation via Edlets.com for short term accommodation.

(Probably, this is what you refer to as holiday let)

- For deposit, I was not aware about the deposit scheme and I also do not think the respondent put the deposit into the three schemes that you have mentioned.”

## **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 Regulations do not apply to holiday lets. Furthermore, the Applicant has failed to provide necessary information (the address of the landlord). The Tribunal cannot grant an order under Rule 103 in respect of holiday lets and without the information requested.

8. 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.**

**Alan Strain**

**23 November 2021**

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**Legal Member/Chair**

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**Date**