



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/21/2842

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 111 on 16 November 2021. The application was in respect of an alleged failure of the Landlord to repay a tenancy deposit and overpayment of rent.

2. The application was considered by the Tribunal on 19 November 2021. The Applicant was asked to provide further information as follows:

"You appear to have referred to the wrong Rule as Rule 80 relates to tenancies which started before 1989. An application for recovery of rent and deposit should be Rule 111 and should be made using Form F. You will have to submit the correct Form and refer to the correct Rule.

Please also note the following –

1. The Tribunal only has jurisdiction to deal with civil applications for certain types of tenancy/occupancy. If your occupancy started after December 2017, as appears to be the case, the Tribunal can only deal with the application if you had a private

residential tenancy in terms of the Private Housing tenancies (Scotland) Act 2016. To qualify the tenancy had to be the Applicants only or principal home and not an excepted tenancy in terms of Schedule 1 of the Act, such as a holiday let. The documents you have submitted indicate that the property was arranged for a short fixed term while you visited Edinburgh, and therefore not your only or principal home. Please confirm the position and explain why you think the Tribunal can deal with the matter.

2. If the application is to proceed you will require to provide a copy of the tenancy agreement, or as much information as you can about the tenancy, including start date, monthly rent, etc.

3. The address you have provided for the respondent is the same as the property address. This can only be used if the Respondent resides there. If he does not, please provide his address. If you do not have the address (and you may be able to obtain this from the agent) you will require to apply for service by advertisement using the form on the Tribunal website. This should be submitted with evidence of attempts to obtain an address, such as a trace report from a Sheriff Officer. Please reply to this office with the necessary information by 3 December 2021. If we do not hear from you within this time, the President may decide to reject the application.”

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 111. The Tribunal does not have jurisdiction in respect of holiday lets. Furthermore, the Applicant has failed to provide necessary information (the address of the landlord). The Tribunal cannot grant an order under Rule 111 in respect of holiday lets and without the information requested.

7. 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

Legal Member/Chair

Date