



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/21/2351

Re: 2 Ardross Court, 20 Ardross Street, Inverness, IV3 5NH ("the Property")

Parties

Mr Jonathan Macleod (Applicant)

Firthview Property Management (Respondent)

Firthview Property Management (Respondent'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 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 27 September 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 21 October 2021. The Applicant was asked to provide further information as follows:

“Before a decision can be made, we need you to provide us with the following: Please confirm that the Respondent/Landlord is Priyen Arvindkumar Shah and not Firthview Property, who appear to be the letting agent, as you have named both in the form. You should contact the letting agent and request an address for the landlord. If they do not provide this, please confirm if they continue to manage the property and if their address can be used as a contact address as this is on the tenancy agreement and the register of landlords as the contact address. Please note that it is the Applicants responsibility to ensure that an application under Rule 103 is lodged with the Tribunal with all required information within 3 months of the end of the tenancy or the application will be time barred Please reply to this office with the necessary information by 4 November 2021. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant did not respond. The Tribunal wrote again by letter of 16 November 2021 in the following terms:

“Before a decision can be made, we need you to provide us with the following: Your application cannot be accepted until you have provided a response to the request for further information. Please provide a response within 7 days or the application may be rejected. Please note that an application under Rule 103 must be lodged with all required information and documents no later than 3 months after the tenancy has ended. Please reply to this office with the necessary information by 22 November 2021. If we do not hear from you within this time, the President may decide to reject the application.”

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. The Applicant has failed to provide necessary information. The Tribunal cannot grant an order under Rule 103 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

26 November 2021

Legal Member/Chair

Date