



**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/22/0727**

**Re: Ground Floor Flat, 170 Pittencrieff Street, Dunfermline, Fife, KY12 8AW ("the Property")**

#### **Parties**

**Miss Huohuo Zhang (Applicant)  
Mr David Sheddon (Respondent)**

**Mr Connor Wyse (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 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 dated 11 February 2022 was received by the Tribunal under Rule 103 on 11 March 2022. 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 enclosed a copy of the rental agreement and an earlier Decision of the tribunal under Rule 103 (PR/19/3125) on 18 December 2019 which granted an order for payment against the Respondent for failure to protect the tenancy deposit. The current application stated that the tenancy had now ended, the Respondent still had not protected the deposit and sought a further award under Rule 103.

The tribunal wrote to the Applicant by letter of 16 March 2022 explaining this to the Applicant and inviting the Applicant to withdraw the application. No response was received.

### Reasons for Decision

3. 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."*

4. '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"*.

5. The application seeks to proceed under Rule 103. A Decision has already been made and order for payment granted by this tribunal. The tribunal does not have jurisdiction to grant a further order as sought.

6. 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.**

# A. Strain

1 April 2022

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Legal Member/Chair

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Date