



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/22/0756

Re: 39 St Patricks Square, Edinburgh, EH8 9EU ("the Property")

Mr Franck Michel (Applicant)

Silver Lining Apartments (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 dated 13 March 2022 was received by the Tribunal under Rule 103 on 14 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)** and for repayment of the deposit.

2. The Application enclosed a copy of the rental agreement which disclosed the Respondent as the "Manager" of the Property and that the let was, on the face of it, a holiday let. The rental agreement provided details of the "reservation", "check in and check out" dates. It was for 108 nights duration.

4. The **Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)** provide in terms of Regulation 3:

3) A "*relevant tenancy*" for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and
(b) by virtue of which a house is occupied by an unconnected person,
unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.

The duty to protect a deposit is on the landlord (Regulation 3(1)).

Section 83(6)(d) of the **Antisocial Behaviour etc. (Scotland) Act 2004** excludes properties which are being used for holiday purposes.

Reasons for Decision

5. 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."

6. '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*".

7. The application seeks to proceed under Rule 103. The tenancy is not a relevant tenancy as defined under Regulation 3 as it is a let for holiday purposes. The application purports to proceed against the Property Manager instead of the Landlord. The Property Manager has no obligation to protect a tenancy deposit. The Tribunal does not have jurisdiction to grant the order sought.

8. An application for repayment of a tenancy deposit must be raised under Rule 111 (not Rule 103).

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.

A Strain

17 March 2022

Legal Member/Chair

Date