



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/20/1629

Re: 212 74 Brunswick St, Glasgow, G1 1TD ("the Property")

Parties

**Miss Nicola Baron (Applicant)
DJ Alexander (Estate Agents) (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 31 July 2020. 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 24 August 2020. 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:

- 1. Please provide a copy of the tenancy agreement or other evidence of the existence of a tenancy.*
- 2. You have named the letting agent as respondent and also named Kyle Brown. Please clarify if this is an employee of the letting agent or the landlord named on the*

lease. An application under the tenancy deposit regulations can only be made against a landlord, not a letting agent. The property appears to be owned by Kevin McLardy. Please confirm if you wish to amend the application to include Mr McLardy as Respondent.

Please reply to this office with the necessary information by 28 August 2020. 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 10 September 2020 in the following terms:

“Before a decision can be made, we need you to provide us with the following:

The Tribunal wrote to you on 24th August requesting further information in order to assess your application you were advised to respond by 28th August but you have not responded. The Tribunal still requires the following information before a decision can be made on your application namely:-

- 1. a copy of the tenancy agreement or other evidence of the existence of a tenancy.*
- 2. Clarification of who the Landlord is.*

You have named the letting agent as respondent and also named Kyle Brown. Please clarify if this is an employee of the letting agent or the landlord named on the lease. An application under the tenancy deposit regulations can only be made against a landlord, not a letting agent. The property appears to be owned by Kevin McLardy. Please confirm if you wish to amend the application to include Mr McLardy as Respondent.

Please note however that any application in terms of the tenancy deposit regulations for a penalty for failure to lodge a deposit in a scheme requires to be made within 3 months of the end of the tenancy. If Kyle Brown is not the landlord then you will have to explain why the Tribunal should treat your application as validly made within the 3 months if you wish to amend the name of the Respondent.

Please respond to these points above within 14 days failing which your application is likely to be rejected.

Please reply to this office with the necessary information by 24 September 2020. If we do not hear from you within this time, the President may decide to reject the application.”

4. The Applicant did not respond.

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 and Regulation 9 of the Regulations. Rule 103 provides for certain information to be lodged with an application:

Application for order for payment where landlord has not paid the deposit into an approved scheme

103. Where a tenant or former tenant makes an application under regulation 9 (court orders) of the 2011 Regulations, the application must—

(a)state—

(i)the name and address of the tenant or former tenant;

(ii)the name, address and profession of any representative of the tenant or former tenant; and

(iii)the name, address and registration number (if any) of the landlord;

(b)be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c)evidence of the date of the end of the tenancy (if available); and

(d)be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

The Tribunal has requested a copy of the tenancy agreement and further information about it. The Applicant has not provided the information requested. The application cannot proceed.

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

12 October 2020

Legal Member/Chair

Date