



**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/20/2522**

**Re: 29 Mill Street, Dingwall, IV15 9PZ ("the Property")**

**Parties**

**Mr Catalin Nistor (Applicant)**

**Miss Sandra Appleyard (Respondent)**

**Miss Andreea Bacila-Rosca (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 was received by the Tribunal under Rule 103 on 3 December 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 21 December 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. Can you please resubmit the tenancy agreement as the legal member has been unable to access it on the computer?*

2. *Can you please resubmit the screen shot of the recent payment of £500 as the legal member has been unable to access it on the computer?*
3. *Can you please confirm the date on which the tenancy came to an end and submit any evidence you have showing this?*
4. *Can you please submit any evidence you have of payment of the deposit?*
5. *Please confirm if all of your deposit has been returned to you?*
6. *Please note that if any of your deposit has not been repaid you are entitled to seek recovery of it. You would do so by making an application for civil proceedings under rule 70 (assured lease) or 111 (private residential tenancy); if you wish to do so you can ask the tribunal to have both cases heard together.*

*Please reply to this office with the necessary information by 4 January 2021.”*

3. The Applicant did not respond. The application was again considered by the Tribunal on 18 January 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:*

1. *Please provide the information requested in the Tribunal’s letter to you of 21 December 2020.*

*Please reply to this office with the necessary information by 1 February 2021. If we do not hear from you within this time, the President may decide to reject the application.”*

4. No response was received. The application was again considered by the Tribunal on 17 February 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 provide the information requested in the Tribunal’s letter to you of 21 December 2020.*

*Please reply to this office with the necessary information by 3 March 2021. If we do not hear from you within this time, the President may decide to reject the application.”*

5. No response was received.

### **Reasons for Decision**

6. 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."

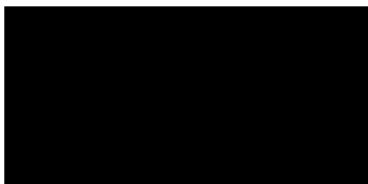
7. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in **R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9**. At page 16, he states: - "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*".

8. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Rule 103 is in respect of applications where it is alleged the landlord has failed to protect a tenancy deposit. The Applicant has failed to provide evidence reasonably required by the Tribunal to establish the Grounds of the claim. The Tribunal cannot grant an order under Rule 103 without the information requested.

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.**



16 March 2021

---

Legal Member/Chair

---

Date