

**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/21/0578**

**Re: 7 Moss View, New Pitsligo, AB43 6FA ("the Property")**

**Parties**

**Mr Kaspars Fedorovs (Applicant)**

**Ms Jane Massey (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 12 March 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 24 March 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 confirm the date when the tenancy ended.*
- 2. Please provide evidence of payment of the deposit.*

3. Please advise what happened to the deposit; was it paid back to you, or was it used for some other purpose, or used as rent. If it was used as rent what period was it used to cover, e.g. the final month's rent or some other period.

4. Please provide a copy of the tenancy agreement, or confirm as much information as you recall about the terms of the tenancy agreement between the parties.

5. Please provide any evidence you have showing that a deposit was being taken (e.g. a copy of any advert for the vacant property referring to a deposit; or messages between the parties at the commencement of the tenancy).

6. Please note that that application you have made is under rule 103; which is an application where there has been a breach of the tenancy deposit regulations, where the deposit has not been placed into an approved tenancy deposit scheme within 30 days of the tenancy commencing and information has not been provided by the landlord. If the deposit has not been returned to you may also be entitled to seek the return of the deposit. Any application should be made under rule 111 if you considered that the deposit has not been repaid to you. You are entitled to make an application under each rule. The applications can be heard together.

Please reply to this office with the necessary information by 7 April 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 application was again considered by the Tribunal on 5 May 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:

We refer to our letter of 24th March and note there has been no response. Can you please now respond to our requests so that we can consider your application?

Please note that your application is time limited and the application needs to be made within 3 months of the end of the tenancy.

Please respond to our previous request within 7 days failing which your application may be rejected,

Please reply to this office with the necessary information by 19 May 2021. If we do not hear from you within this time, the President may decide to reject the application."

5. The Applicant responded by email of 8 May 2021 in the following terms:

"Good Morning,

Sorry but i cannot provide additional evidence about deposit payment , because payment was made from my ex partners account we now are separate and she refuses to provide me with those.

*If there is a possibility to continue application without that, then please do that , if not please accept my apologies for wasting your time.*

*Please let me know what the outcome is."*

## **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.**

**Alan Strain**

**19 May 2021**

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**Legal Member/Chair**

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**Date**