



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/21/2457

Re: 8 Saucher, Kinrossie, PH2 6HY ("the Property")

Parties

Mrs Cathy Marsh (Applicant)

Mr Peter Doogan (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 8 October 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 14 October 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 complete sections 7(b) and (c) and 8 of the application form. These sections require to explain the circumstances which require you to bring this application, the order you seek from the Tribunal, and the documents you produce and rely upon in support of your application. 2) Please provide a full copy of the lease agreement. 3) Please provide evidence of payment of a deposit. Please note that there is a time-

limit of 3 months from the end of the tenancy (if you should choose to leave the Property) in which you are able to bring this application. Please reply to this office with the necessary information by 28 October 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 Tribunal wrote again by letter of 10 November 2021 in the following terms:

“Before a decision can be made, we need you to provide us with the following:
(1) Please amend the application and provide the information requested in the tribunal’s letter of 14 October 2021. Without this the application cannot proceed and will have to be rejected. The information requested was as follows:

1) Please complete sections 7(b) and (c) and 8 of the application form. These sections require to explain the circumstances which require you to bring this application, the order you seek from the Tribunal, and the documents you produce and rely upon in support of your application.

2) Please provide a full copy of the lease agreement.

3) Please provide evidence of payment of a deposit.

(2) In addition, please confirm if the tenancy is ongoing or has ended. If it has ended please confirm the date. As you have previously been advised, any application under Rule 103 must be made within 3 months of the end of the tenancy and an application is only made if it is complete and attaches all of the required documents.

(3) Finally, you have not yet provided a lease agreement but it appears from a search of Landlord Registration that there are two joint owners. If you wish to make the Application against two Respondents please submit a request to amend the application and add a paper apart with a second respondent’s details.

Although the tribunal has requested the above information within 14 days, it is your responsibility to consider the timebar and provide a full response in time (3 months from the end of the tenancy.)

Please reply to this office with the necessary information by 24 November 2021. If we do not hear from you within this time, the President may decide to reject the application.”

Reasons for Decision

4. 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."

5. 'Fivolous' 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*".

6. The application seeks to proceed under Rule 103. The Applicant has failed to provide necessary information. The Tribunal cannot grant an order under Rule 103 without the information requested.

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

Legal Member/Chair

Date