



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/21/2557

Re: 24B Baker Street, Stirling, FK8 1BJ2 ("the Property")

Parties

Mr Michael Sim (Applicant)

Fineholm Letting Services (Edinburgh) Ltd (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 18 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 21 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. You appear to have named the letting agent as Respondent. Please note that the tenancy deposit regulation applies to landlords, not letting agents, even

if the property is managed. Please submit an amended application form which correctly identifies the Respondent. If you do not have an address you should contact the letting agent for an address for service of the application. Please note that this cannot be a "c/o" address. Landlord Registration may also be able to assist you with an address.

2. Please advise if the joint tenant wishes to be added to the application as joint Applicant or provide written authority for the application to proceed in the sole name of the Applicant.

3. Please note that the application has to give fair notice of the basis of the claim. The amended application should include details of this at section 7. For example – late lodging of the deposit or failure to lodge the deposit.

4. Please confirm the start date of the tenancy as this is not specified in the tenancy agreement.

Please reply to this office with the necessary information by 4 November 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 9 November 2021 in the following terms:

"Before a decision can be made, we need you to provide us with the following: We refer to our earlier letter dated 21 October 2021 requesting further information (a copy of which is attached). Can we please now hear from you on the terms of that letter. If there is no response within the next fourteen days then the application may be rejected.

Please reply to this office with the necessary information by 23 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. '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"*.

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



26 November 2021

Legal Member/Chair

Date