



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/22/3102

Parties

Mr Stuart Neil (Applicant)

Beechwood (Respondent)

3/2 4 Baronald Street, Rutherglen, Glasgow, G73 1AH (House)

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 26 August 2022. 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 5 September 2022. 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 have stated that this is a Rule 103 application, however, Rule 103 only pertains to cases where a payment order is sought for the landlord’s failure to lodge the tenancy deposit. You have not stated that this is the case, and, in any event, a Rule 103 application must be made within three months of the end date of the tenancy. The application must include the landlord’s name and address. You have not included the landlord’s name and address, and you appear to have raised the application against the letting agent, rather than the landlord. As the three month period has now expired, a Rule 103 application would now be time barred. 2. You would appear to be seeking return of your deposit, so the correct rule is either Rule 70 or Rule 111. This is unclear from your tenancy agreement, which refers to earlier agreements. There is no such tenancy agreement as an assured short hold tenancy in Scottish law, so your tenancy is either an assured/short assured tenancy (if it commenced before 1st December 2017) or a private residential tenancy, which refers to any tenancies created after that date. Please confirm the correct type of tenancy and the correct Rule, and amend the application form to show the correct rule. There is no three month period for the Rule 70/111 application. 3. You should also ascertain the name and address of the landlord, as the tenancy agreement states that Beechwood Housing is a letting agent. The landlord is normally the owner of the property unless there is a contract in place between the owner and Beechwood Housing, whereby Beechwood Housing have taken on the role of landlord and sub-let to the tenant. You may be able to gain some further information from Beechwood Housing in this regard. We must have an address for a Respondent, and an application is incomplete without this information. It is possible to apply for service by advertisement where an address is not known, but steps must be taken first to obtain the address, such as sheriff officers or a tracing agency”

3. The Applicant did not respond. The Tribunal wrote again by letter of 12 October 2022:

“Before a decision can be made, we need you to provide us with the following: 1. We refer to our letter of 5th September a copy of which we enclose and would be obliged if you could now respond and advise if you wish to amend your application to proceed as a civil application or withdraw this application under Rule 103. Please now let us have your response within 14 days failing which it is likely to be rejected Please reply to this office with the necessary information by 26 October 2022. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received.

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 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 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

8 November 2022

Legal Member/Chair

Date