



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/22/0664

Re: 1 0/2 Littlemill Court, Bowling, G60 5BP ("the Property")

Parties

Miss Joyce Walker (Applicant)

Rent Locally Lanarkshire (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 4 March 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 9 March 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 state that the Respondent sold the property. The Title Deeds indicate that the owner of the property since October 2020 is JYB PROPERTIES LTD, 251

Kirkintilloch Road, Bishopbriggs, Glasgow, G64 2JD. The owner would normally be the landlord. Please indicate why you have not raised the application against JYB Properties Ltd, and why you believe your landlord to be Mr Jim Brown. If the property has been sold more recently, the identity of your landlord may have changed. Please confirm the identity and current address of the Landlord. This cannot be a care off address or the address of a letting agent. 2. Please provide a copy of the tenancy agreement. 3. You state that you wish to have your deposit returned. A Rule 103 application only deals with the situation where a tenancy deposit has not been lodged with a tenancy deposit scheme or required information has not been provided. An application under Rule 111 would have to be raised in order to deal with an unreturned deposit. However, the tenancy has not yet ended, therefore, the deposit is not due to be returned to you, so any such application would be premature. 4. Please provide evidence of the amount and date of payment of the tenancy deposit. 5. Please provide evidence as to why you believe you are due compensation. If this is because you believe the deposit was not deposited in a tenancy deposit scheme, please indicate how you became aware of this. You may wish to include information from the three tenancy deposit schemes to indicate that the deposit is not lodged with them.' Please reply to this office with the necessary information by 23 March 2022. 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 31 March 2022:

"Before a decision can be made, we need you to provide us with the following: • The tribunal have advised that you have a further 7 days to respond to our further information request of 9 March 2022 (a further copy of which is also attached to today's email). Please reply to this office with the necessary information by 7 April 2022. If we do not hear from you within this time, the President may decide to reject the application."

The Applicant responded by email of 8 April 2022 in the following terms:

"Hi there, I was told by the letting agent that Jim was the landlord, I also met him in person on 1st April when handing over the keys. I know for certain that the deposit wasn't held in a safe secure scheme as the letting agent recently confirmed this. Unfortunately I don't have a copy of these at present as I put all my belongings in storage. I can enquire about a bank statement for proof of deposit. I don't think there is a dispute that I paid a deposit."

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.

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.

A Strain

12 April 2022

Legal Member/Chair

Date