



**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/22/2298**

## **Parties**

**Mr Martin Rooney (Applicant)**

**Zone Letting (Respondent)**

**6/35 220 Wallace St, Glasgow, G5 8AL (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 11 July 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 13 July 2022. The Applicant was asked to provide further information as follows:

*“1. You have made the application against the letting agent. Please note that the regulations apply to landlords, not letting agents. According to the Scottish Landlord register (which can be accessed online) and the tenancy agreement the Landlord is Eilidh Robertson. Her contact address on landlord registration is 18 Woodside Place, Glasgow. Please confirm if you wish to amend the application to reflect this and provide an amended form. 2. Please ensure that section 7c in the amended form is completed. You must state what order you are seeking. The Tribunal can award up to 3 times the amount of the deposit. 3. Please confirm the date on which the tenancy ended and provide evidence of this. Please note that an application under Rule 103 must be lodged with all required evidence and documents no later than 3 months after the tenancy has ended. Please reply to this office with the necessary information by 27 July 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 2 August 2022:

*“Before a decision can be made, we need you to provide us with the following: We refer to your application and our letter to you of 13th July and note that you have not responded to this. We enclose another copy of this letter and would confirm that we need your response to the matters raised therein to consider your application and confirm whether it can be accepted. Please note that all applications under Rule 103 require to be made within 3 months of the tenancy ending and that is made when all outstanding documents necessary to meet the required manner of lodgement are lodged. It is the responsibility of the Applicant to ensure that any application is made with all necessary information/documentation within that time, otherwise the application will have to be rejected. As we do not know when the tenancy ended we cannot tell you when the 3 months will end. It is in your interests to respond as soon as possible. Please reply to this office with the necessary information by 12 August 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."*

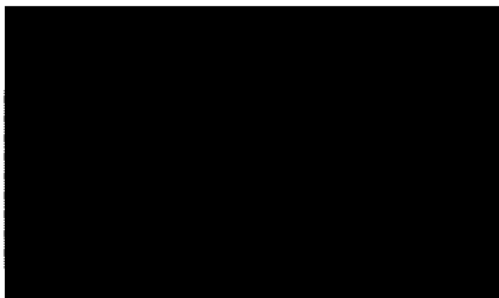
5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *"What the expression means in this context is, in my view, that the court considers the application to be 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.**



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**Legal Member/Chair**

**19 August 2022**

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**Date**