



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/21/1466

Re: Flat 4, 87 Shandwick Place, Edinburgh, EH2 4SD ("the Property")

Parties

Mr Tafadzwa Macdeeds Kagodora (Applicant)

Umega Lettings (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 16 June 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 5 July 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: • Thank you for your application. You have named the landlord's letting agent as respondent in your application. Applications under Tribunal Rule 103 and the relevant legislation can only be brought against the landlord and not against their agent. Please confirm if you wish to amend your application to name the landlord as respondent. Please reply to this office with the necessary information by 19 July

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 6 August 2021:

"Before a decision can be made, we need you to provide us with the following: • You have not responded to the Tribunal's request for information. Please note that an application under Rule 103 can only be made against a landlord, not the letting agent who represents them. Please confirm if you wish to amend the application to reflect this. Your landlord's details may be found on the tenancy agreement or you can ask the letting agent to provide them. Please provide a response within 14 days or the application may be rejected. Please also note that an application under Rule 103 must be submitted to the Tribunal with all required information no later than 3 months after the tenancy has ended. Please reply to this office with the necessary information by 20 August 2021. If we do not hear from you within this time, the President may decide to reject the application."

No response was received.

4. The Tribunal wrote again on 6 September 2021 in the following terms:

"Before a decision can be made, we need you to provide us with the following: You have not responded to the Tribunal's two requests for information. Without a response your application is likely to be rejected. An application under Rule 103 can only be made against a landlord, not the letting agent who represents them. Can you please confirm if you wish to amend your application with regard to the name of the Respondent to reflect this? Your landlord's details may be found on the tenancy agreement or you can ask the letting agent to provide them. Please also note that an application under Rule 103 must be submitted to the Tribunal with all required information no later than 3 months after the tenancy has ended so please provide your response within 7 days or the application may be rejected. Please reply to this office with the necessary information by 13 September 2021. 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

5. 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."

6. '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"*.

7. 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

30 September 2021

Legal Member/Chair

Date