



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/20/1371

Re: 97 Ardarroch Road, Aberdeen, AB24 5QS ("the Property")

Parties

**Mr Jacob Duane, Mr Aleksander Stojkowski (Applicant)
Northwood Aberdeen 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 21 June 2020. 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 4 September 2020. The Applicant was asked to provide further information as follows:

"We refer to the tribunal's correspondence of 1 July and 25 August 2020, in which further information was requested from you. The outstanding issues in respect of which further information is required are as follows:

1. Please confirm when you paid the deposit to the landlord Mr Michael Combe, or the landlord's agent, Northwood Aberdeen Limited, and provide any evidence which you have to support the payment date and the amount of the deposit paid;

2. Please supply an amended Application section 3 if you wish to change the details of the Respondent to the name of the landlord. The duties under the Tenancy Deposit Schemes (Scotland) Regulations 2011 are placed on landlords. An application for a sanction for late lodging of a tenancy deposit in a protection scheme is to be made against the landlord. You have named a person other than the landlord as the Respondent on your Application. According to the tenancy agreement the landlord is Mr Michael Combe and the landlord's agent is Northwood Aberdeen Ltd.

3. You refer to being informed by Safe Deposit Scotland that the deposit was protected with them from 25 November 2019. Please provide any documents which you have received to support this information, such as a copy of the Deposit Protection Certificate or an email notifying you of the same.

Please supply the requested information by 17 September 2020. As this is the third time this information has been requested from you, the President will proceed to determine whether to accept the Application on or after 17 September 2020 and if you have not provided the information your Application may be refused. As you may be aware, an Application under Rule 103 must be made within three months of the end of the tenancy. If your Application is refused for a failure to supply required information you will be unable to make another Application as it is now more than three months since the end of the tenancy."

3. The Applicant did not respond. The Tribunal wrote again by letter of 13 October 2020 in the following terms:

"Before a decision can be made, we need you to provide us with the following:

1. Please provide the information requested in the Tribunal's letter to you of 4 September 2020.

Please reply to this office with the necessary information by 27 October 2020. If we do not hear from you within this time, the President may decide to reject the application."

4. The Applicant did not respond.

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 provides for certain information to be lodged with an application:

Application for order for payment where landlord has not paid the deposit into an approved scheme

103. Where a tenant or former tenant makes an application under regulation 9 (court orders) of the 2011 Regulations, the application must—

(a) state—

(i) the name and address of the tenant or former tenant;

(ii) the name, address and profession of any representative of the tenant or former tenant; and

(iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c) evidence of the date of the end of the tenancy (if available); and

(d) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

The name and address of the landlord has not been provided. The Applicant has failed to provide proof of payment of the deposit and evidence from Safe Deposit Scotland as requested by the Tribunal. Furthermore, the remedy in respect of a failure to protect a tenancy deposit is against a landlord. The Applicant has raised the application against the landlord's agents and has not sought to amend. The application cannot succeed against the Letting Agent.

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.

Alan Strain

6 November 2020

Legal Member/Chair

Date