



**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/20/2047**

**Re: 15/3 Portobello Road, Edinburgh, EH8 7BB ("the Property")**

### **Parties**

**Miss Imogen Gardner (Applicant)  
Mr Harsharn Singh (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 24 September 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 15 October 2020. 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:*

*You have said in your application that you are applying for the return of your deposit however you have applied under Rule 103 of the Tribunal's rules which is an application for a penalty for failure to lodge the deposit in a tenancy deposit scheme. An action for return of the deposit should be made under Rule 70 an action for a civil claim please confirm if you wish to amend your application to proceed under Rule 70?*

Can you also please advise if you have any evidence of the payment of the deposit?

*Please reply to this office with the necessary information by 29 October 2020. 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 13 November 2020 in the following terms:

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

*Please provide the information requested in the Tribunal's letter to you of 15 October 2020.*

*Please reply to this office with the necessary information by 27 November 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 is in respect of applications where it is alleged the landlord has failed to protect a tenancy deposit. The Applicant seeks repayment of the deposit. The

Tribunal cannot order repayment of the deposit under Rule 103. Furthermore, the Applicant has failed to produce evidence of payment of the deposit. The Tribunal cannot grant an order where it is not satisfied a deposit has been paid.

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**

**9 December 2020**

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**Legal Member/Chair**

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**Date**