



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/20/1693

Re: Ground Flat (0/1), 14 Crown Terrace, Dowanhill, Glasgow, G12 9ES ("the Property")

Parties

Mrs Vivienne O'Brien (Applicant)
Mr David Lamb (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 11 August 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 26 August 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:

Your Application appears to contain two separate applications: an application under Rule 103 for the landlord's alleged failure to lodge your deposit and an application against the landlord and/or his letting agent for return of your deposit, which would be under Rule 111, a civil claim in relation to a private residential tenancy.

1. Your application in terms of Rule 103 cannot proceed as it is out of the time period for making such an application because it was made more than three months after the end of the tenancy. Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations provides: “(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal] 1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...] 2 no later than 3 months after the tenancy has ended.”

2. Having regard to the above: a. If you wish to amend your Application to proceed under Rule 111, to claim for return of the deposit which was paid to the Respondent/Respondent's previous letting agents please submit an amended Application on Form F;
b. Please include details of the Respondent(s) against whom the application is made on the Application Form; and if there is more than one Respondent include the second Respondent's details on a paper apart to the Application Form;
c. please provide documentary evidence in support of your claim for return of your deposit as required by Rule 111; including proof of payment of your deposit; any correspondence in relation to the deposit; details of the deletion of the deposit account; and any other documentary evidence you wish to produce in support of your Application; and
d. If you do not know the Respondent's current whereabouts and wish to submit an application for Service by Advertisement on the Respondent, please provide an application for Service by Advertisement. The Forms and Guidance can be found on the tribunal's website: and produce evidence of efforts to trace the Respondent; or submit confirmation from the Respondent's agent that they are authorized to accept service on his behalf.

Please reply to this office with the necessary information by 9 September 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 16 September 2020 in the following terms:

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

Further to the earlier email from the tribunal, can you please advise how you intend to progress this application under rule 103.

• First as noted in the tribunal letter of 26 August, it appears that your application under section 103 may be out of time
... if it was made more than three months after the end of the tenancy. Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations provides: “(1) A tenant who has paid a tenancy deposit may apply to the [First-tier Tribunal]1 for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit. (2) An application under paragraph (1) must be made [...]2 no later than 3 months after the tenancy has ended.”

Your application states that you moved out of your property on 5 May 2020 and the application was dated by the tribunal on 11 August 2020. Given these dates please

confirm if you accept that this application is out of time and that you wish to withdraw this application; or do you have evidence showing that the tenancy ended sometime after 11 May 2020 (and therefore is not out of time). Please confirm your position.

• *Secondly, as noted in earlier correspondence you state that you want the deposit to be repaid, you have been requested to make a separate rule 111 application (a repayment order of your deposit). This should be made on a separate application form providing the information required by rule 111 and set out in the tribunal letter of 26 August 2020.*

Please reply to this office with the necessary information by 30 September 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.

Regulation 9 (2) provides that applications must be made within 3 months of the end of the tenancy. The Tribunal has requested the Applicant to confirm the end date of the tenancy and the Applicant has not provided the information requested. The application cannot proceed and appears to be out of time.

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

Legal Member/Chair

14 October 2020

Date