

Housing and Property Chamber
First-tier Tribunal for Scotland



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/21/0940

Re: 8/3 Grindlay Street, Edinburgh, EH3 9AS ("the Property")

Parties

Mr Jack Allars-Board (Applicant)

Mrs Louise Roberts (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 19 April 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 28 November 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: 1. Please confirm if you wish to withdraw or continue with the application. 2. Please confirm the date on which the tenancy ended. You have provided an email from 30 January which indicates that notice was being given, but it does not specify a date. 3. Please provide an amended section of the form to clarify what is being sought, as an application under Rule 103 cannot be for the return of the deposit, only for an order of up to three times the deposit Please reply to this office with the necessary

information by 12 May 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 21 May 2021:

"Before a decision can be made, we need you to provide us with the following: We wrote to you asking you to confirm whether or not you wish to go forward with the application. Please now either confirm that you wish to withdraw the application or provide the previously requested information about the end date of the tenancy and what specific order you are seeking. Please reply to this office with the necessary information by 31 MAY 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

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 evidence of the end date of the tenancy or to clarify what order is being sought. The Tribunal cannot grant an order under Rule 103 without confirmation of the end date of the tenancy and it cannot grant an order for repayment of the deposit as sought.

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

14 June 2021

Legal Member/Chair

Date