

Housing and Property Chamber First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF THE FIRST-TIER TRIBUNAL in the case

APPLICANT: MISS ISABELLA CONAGHAN & MR GABOR SZABO
RESPONDENT: JULIE CAMPBELL
PROPERTY ADDRESS: 31A PORCHESTER STREET, GLASGOW, G33 5BN
CASE REFERENCES: FTS/HPC/PR/18/0204 & FTS/HPC/PR/18/0206

BACKGROUND

1. The Applicants presented two separate applications to the Tribunal, one application under Rule 87 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“The 2017 Regulations”), the second one being under Rule 103 of The 2017 Regulations. The application under Regulation 87 sought to recover from the Respondent an unlawful premium which had been charged in relation to a lease, that being in the sum of £175. The Application in terms of Regulation 103 was for an order for payment where the Landlord had not paid a deposit of £525 into an approved Tenancy Deposit Scheme. That application, in fact, sought repayment of an amount of £525 which had apparently been paid as a deposit for a lease.
2. The following documents were provided in support of the application:-
 - a) application form in relation to each application;
 - b) copy screenshot of text messages between the parties.
3. The application forms, and the text messages, indicated that the Applicants expressed a desire to take a lease of the property at 31A Porchester Street, Glasgow, G33 5BN. An amount of £700 had been transferred by the Applicants to the bank account of the Respondent, that payment, apparently, being a “holding deposit” of £175, that being a payment to ensure that the Landlord did not, prior to the intended commencement

date of the tenancy, let the property to anyone else, and a sum of £525, being a deposit in relation to the intended lease.

4. The text messages indicated an intention that a Lease would be signed which would have a commencement date of 1st January 2018.
5. A set of keys for the property appears to have been provided to the Applicants prior to 1st January 2018. They, having visited the property, thereafter decided that they did not wish to proceed with a lease of the property. No lease had been signed at that point. The Applicants never entered into possession or occupation of the property. The Applicants never made any payment of rent for the property.

DECISION

6. The legal member considered the application in terms of Rule 8 of the Schedule to the 2017 Regulations. 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;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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.

7. After consideration of the application and other documents submitted in support of it, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application in accordance with Rule 8 (1)(c) .

REASONS FOR DECISION

Rule 103 Application

8. The TDS regulations provide as follows:-

3.(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and
(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

9.(1) A tenant who has paid a tenancy deposit may apply to the sheriff 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 by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and

(b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—

(i) pay the tenancy deposit to an approved scheme; or

(ii) provide the tenant with the information required under regulation 42.

References to “the sheriff” should now be read as referring to the First Tier Tribunal for Scotland.

9. The circumstances outlined in the application indicated that the Applicants had never occupied the property in question. Accordingly, the terms of Regulation 3 (3) of the TDS Regulations are not met. A relevant tenancy requires a tenancy or occupancy arrangement by virtue of which the house is occupied by another person. In this case, the information makes it clear that the property was not occupied by the Applicants and no tenancy agreement was ever entered into.

10. Further, in terms of Regulation 10 of the TDS Regulations, the powers available to the Tribunal, if a breach of Regulation 3 of the TDS Regulations had been established, would enable the Tribunal to make an order for payment to the Applicants of an amount not exceeding three times the amount of the tenancy deposit and to make an order that the Landlord pay the tenancy deposit to an approved scheme. For the reasons stated, the Tribunal considers that no relevant tenancy has come into effect and, therefore, the powers conferred upon the Tribunal in terms of Regulation 10 do not exist in this particular case.
11. The Applicants, however, did not request an order in terms of Regulation 10 of the TDS Regulations, rather they requested repayment of the £525 which had been paid by way of a deposit. The TDS regulations do not confer a power upon the Tribunal to make such an order.

Rule 87 Application

12. In relation to the application under Rule 87, similar difficulties arise. Unlawful premiums are prohibited in terms of the Rent (Scotland) Act 1984, ("the 1984 Act") Section 82 of which prohibits the payment of any premium being required in relation to the grant, renewal or continuance of a protected tenancy.
13. In terms of Section 1 of the 1984 Act, a Protected Tenancy is one under which "a dwellinghouse is let"
14. As previously stated, the Property was never, in fact, let to the Applicants. No lease was ever entered into. The Applicants never entered into any occupation of the property. No rent was ever paid.
15. In the circumstances outlined, the Tribunal considers that, given the absence of any tenancy, the Tribunal has no powers open to it to grant the orders sought by the Applicants.

WHAT YOU SHOULD DO NOW

If you accept the legal member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

V Crawford

Mr Virgil Crawford
Legal Member
26 February 2018