

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/19/1442

Re: 130 Hamilton Place, Aberdeen, AB15 5BB ("the Property")

Parties:

Mr Edward Adderley ("the Applicant")

Mr Peter Mearns ("the 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 rejected 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 69 on 13 May 2019. The application asserted that the Applicant had been unlawfully evicted and sought damages. The following documents were enclosed with the application:
 - (i) Schedule of Grievances.

Reasons for Decision

2. 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."

3. '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"*.
4. The Tribunal wrote to the Applicant by letter of 22 May 2019 asking for further information:
 - (a) To provide an amended application setting out the head of claim, how any sum is calculated and set out the legal basis of each claim;
 - (b) Evidence in support of each claim ; and
 - (c) A chronology.

The Tribunal asked for a response by 5 June 2019.

5. The Applicant responded by email of 5 June 2019. His response provided some of the information requested. The Tribunal wrote again on 17 June 2109 requesting:
 - (i) Details of the actual amount of damages sought as calculated under section 37 of the Housing (Scotland) Act 1988 (**Act**);
 - (ii) The Applicant to consider section 36 of the Act which sets out the lawful basis of any claim;
 - (iii) Copy lease agreement for the Property;
 - (iv) Copy lease agreement for 106 Clifton Road; and
 - (v) Any documentary evidence showing or tending to show that he was unlawfully deprived of the right to occupy the Property.

The Tribunal asked for a response 1 July 2019.

6. The Applicant responded by email of 20 June 2019 with copies of the lease agreements. He sought and was granted a number of extensions of time to produce the rest of the information until 9 August 2019. He responded by email of 9 August with details of the damaged and missing goods from the Property. He did not address the request for details of the amount of damages as calculated under section 37 of the Act.
7. This is an application for damages under section 36 of the Act. Section 37 of the Act specifies how damages are to be assessed. It provides:

37 The measure of damages.

(1)The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—

(a)the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and

(b)the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.

The Applicant has failed to produce any information which would facilitate quantification of his claim under section 37.

8. Rule 69 of the Tribunal Procedure Rules requires certain specific information to be provided for an application to proceed:

Application for damages for unlawful eviction

69. Where a former residential occupier makes an application under section 36(6A) or (6B) (damages for unlawful eviction) of the 1988 Act, the application must—

(a)state—

(i)the name and address of the former residential occupier;

(ii)the name, address and profession of any representative of the former residential occupier;

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

(iv)the details of the amount of damages sought based on section 37 of the 1988 Act in respect of the loss of the right to occupy the premises; and

(b) be signed and dated by the former residential occupier or a representative of the former residential occupier.

Rule 69(b) specifically requires details of the damages sought based upon section 37.

9. In light of the failure to provide the information required the Tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The application could not proceed against the Respondent without the amount of damages sought calculated under section 37. The Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that the failure to provide the required information constituted 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.

A Strain

Legal Member/Chair

Date

21 August 2019