



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case reference FTS/HPC/PR/20/1354

Parties

Miss Amy Unett (Applicant)

Mr Eric Gray and Mrs Lana Gray (Respondent)

RE: 69 Churchill Crescent, St Andrews, KY16 8EF (“Property”))

Tribunal: Mrs A Devanny, Chamber President and Legal member

DECISION

The Tribunal rejects the application by the Applicant dated 18 June 2020 being an application made under Rule 103 of The First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 contained in SSI 2017 No 328 (“the Procedural Rules”). The rejection is made under Rule 8(1) (a) of the Procedural Rules.

REASONS

1. This is an application seeking an order for payment arising from a landlord’s failure to comply with duties detailed in the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“Regulations”). Regulation 3 states the duties of a landlord with regard to lodging of a tenancy deposit in an approved scheme.

*“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.”

Section 2 of the Regulations defines “working day” as meaning

“a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;”

2. The Applicant was asked to clarify why she considers she had a claim. In response she stated:

“Given that I paid the deposit on 18/10/2019 and the deposit was not lodged into the deposit scheme until 27/11/2019, I believe that the deposit was not paid within 30 working days to a protection scheme.”

3. A calculation of working days between 18 October 2019 and 27 November 2019 is less than 30 working days when taking into account the definition of “working day” in the Regulations. Accordingly, the application has no prospect of success and is hopeless. That being the case it meets the test of being “frivolous” within the legal context of that term. ‘Frivolous’ in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court* (1998) Env LR9. He indicated at page 16 of the judgment; “What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”. The application is rejected in terms of rule 8 (1) (a) of the Tribunal Rules.

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 Devanny

.....Legal Member

Date: 8 July 2020