



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mr Darius MacPherson in terms of Rule 48 of the Rules.

Case reference FTS/HPC/RP/19/3112

At Glasgow on the 11 October 2019, Martin Joseph McAllister, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Mr Darius MacPherson in respect of the property at 0/1 30 Ferguslie, Paisley, PA1 2QT (the property) which he rented from Mr William Cameron, 24 Kings Road, Elderslie, Johnstone, PA5 9LY (the Landlord) under a Private Residential Tenancy Agreement. The application is under Section 22(1) of the Housing (Scotland) Act 2006 (the 2006 Act) and is in respect of the Landlord’s obligation under Section 14(1)(b) of the said Act to ensure that the property meets the repairing standard under Section 13 of the 2006 Act. The application was dated 28th September 2019 and was received by the Tribunal Administration on 3rd October 2019.
2. The application was accompanied by the following:-
 1. The Private Residential Tenancy Agreement (the copy was undated).
 2. A statement provide by the applicant.
3. The statement gave details of the applicant’s concerns. It states that he had moved from the property on 18th August 2019 and had removed his belongings on 25th August 2019. The application states that the goods belonging to the applicant had been damaged by mould as a result of dampness in the property and, that , because of the dampness, the applicant had to move out. It further states that the applicant is seeking compensation from the Landlord for the damage caused to his goods.
4. There is a fundamental issue with this application which I do not consider can be overcome. The applicant left the property on 25th August 2019 and the tenancy came to an end on that date. The applicant is no longer a

tenant and I do not consider that he has locus to make an application to the Tribunal in respect of any alleged breaches of the Landlord in respect of the duty to maintain the property to the repairing standard.

5. The Tribunal does have the power to determine an application where a tenancy has come to an end. Paragraph 793) of schedule 2 of the 2006 Act allows the Tribunal to continue to determine an application after a tenancy has come to an end (which would automatically mean that any application would be deemed to have been withdrawn) but that can only occur after a case has been referred for determination. This does not apply in the application before me.
6. Rule 8(1)(a)of the Rules allows an application to be rejected by the Chamber President if ***“they consider that an application is vexatious or frivolous”***.
7. “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”.
8. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above.
9. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. The applicant is no longer a tenant and there is no remedy under the 2006 Act for compensation to be awarded.
10. The applicant is seeking compensation. Even if it had been competent for the application to be determined such a remedy would not have been possible under an application under Rule 48 of the Rules. Any application seeking such a remedy should be made under Rule 111 of the Rules.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

M McAllister

Martin Joseph McAllister

Legal Member

