



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.

Chamber Ref: FTS/HPC/RP/20/2251

Re: 2 Chamfron Gardens, Stirling, FK77 XV ("the Property")

Parties:

Mr David Grierson, 2 Chamfron Gardens, Stirling, FK77 XV ("the Applicant")

Mr Archibald Cowie, Apartment 3002, Zig Zag Tower, PO Box 24049, Doha, Qatar ("the Respondent").

Ms Linda Leung, 98 Lancefield Quay, Glasgow, G38 JN (the Applicant's Representative).

Tribunal Member: Martin J. McAllister (Legal Member), acting under delegated powers of the Chamber President.

1. The Tribunal rejects the application by the applicant dated 3rd November 2020 which is an application under Section 22 (1) of the Housing (Scotland) Act 2006 ("the Act") and Rule 48 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
2. The rejection is in terms of Rules 8 (1) (a) and 8 (1) (c) of the Rules.
3. The Applicant's application founds upon the Landlord failing to respond to the requests of the Applicant to carry out repairs to ensure that the Property is maintained to the repairing standard in terms of the Act.

4. Section 22(3) of the Act states that no application can be made unless the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the duty to ensure that the property is maintained to the Repairing Standard as defined in the Act.
5. The Tribunal was satisfied that the Respondent received such notification. Any landlord receiving notification that repairs require to be done to a property must be given a suitable period of time to carry out the works and obviously must be afforded access to the property in question.
6. The Respondent provided information to the Tribunal with regard to works which had been done to the Property in response to previous concerns raised by the Applicant. He also provided copies of emails between the Applicant and the Respondent which chain of emails started on 2nd September 2020 and was concerned with the Respondent attempting to get access to the Property to inspect and carry out any repairs which were necessary. The emails show that the Respondent had given a number of dates to the Applicant and demonstrated the Respondent's willingness to carry out any works required. The emails show that the Applicant refused to allow access, at one point citing illness. The emails were dated from 2nd September 2020 to 9th November 2020.
7. Rule 48(b) (ii) of the Rules states that any application must be accompanied by the notification referred to in paragraph (1) (a) (viii) (notification to the landlord of any work required) and any subsequent correspondence relating to that notification. When the Applicant submitted the application, he was aware that the Respondent was attempting to arrange access. He chose not to mention this in the application or, as he was required to do in terms of the Rules, send copies of correspondence which, in this case would have been the email chain.
8. In terms of Section 23 (2) (a) of the Act, the Chamber President may reject an application if it is vexatious or frivolous. In this case, the Applicant has not allowed the Respondent an opportunity to inspect the Property and carry out any necessary works.
9. "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".
10. The Tribunal considers that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above. It rejects the application in terms of Rule 8(1) (a) of the Rules.

11. Further, in terms of Rule 8(c) of the Rules, the Tribunal has good reason to consider that it would not be appropriate to accept this application. The provision of sections 48 (b) (ii) of the Rules have not been followed by the Applicant.

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

M McAllister

Martin J. McAllister, Legal Member, 23 November 2020