

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

2/4, 6 Firpark Close, Glasgow

Case Reference: FTS/HPC/PR/19/3716

GREIG MELLON, 14 Perivale, Monkston Park, Milton Keynes MK10 9PE
("the Applicant")

1-2 LET, 104 Bellgrove Street, Glasgow G31 1AA ("the Respondent")

BACKGROUND

1. On 20 November 2019 the Applicant lodged an application for payment of a sum under the Tenancy Deposit Schemes (Scotland) Regulations 2011 in connection with the deposit for the letting of a flat at 2/4, 6 Firpark Close, Glasgow ('the property'). The 2011 Regulations provide for the Tribunal to order a landlord to pay a tenant or former tenant. The application purported to seek an order for payment by the landlord's letting agents and not the landlord.

DECISION

2. For the reasons given below this application is rejected.

REASONS FOR DECISION

3. I considered the application in terms of Rule 8 of the 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;*
- (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; . . .*

(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."

4. For the purposes of this rule the word 'frivolous' does not have its ordinary day-to-day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.
5. Although the application was made under rule 103 of the Procedural Rules, it did not seek the remedy that is covered by rule 103. Rule 103 exists for applications by tenants

seeking payment of compensation from landlords for not having lodged a deposit under a tenancy agreement with a tenancy deposit scheme. Here in contrast, payment was sought from the landlords' letting agents.

6. Furthermore, the application did not disclose when or how the deposit had been paid, the date that the tenancy ended or any copy of the tenancy agreement. These matters were raised by the Tribunal with the Applicant by means of its letters dated 5 and 23 December 2019. They have not been dealt with in any of the e-mails sent by the Applicant to the Tribunal between those dates. The letter dated 23 December 2019 stated that if the Tribunal did not hear from the Applicant by 6 January 2020 the President might decide to reject the application. There has been no response to the letter of 23 December 2019.
7. In all of these circumstances I take the view that the Tribunal cannot entertain the application at all. In those circumstances the current application is misconceived and doomed to fail. In addition the failure to respond gives me good reason to believe that it would not be appropriate to accept this application for further consideration.
8. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' in its legal meaning for the purposes of rule 8(1)(a) of the Procedural Rules. In addition under rule 8(1)(c) I am also required to reject it.

What you should do now

If you disagree with this decision you may appeal the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, you must first seek permission to appeal from the First-tier Tribunal. You must seek permission to appeal within 30 days of the date the decision was sent to you. Information about the appeal procedure can be forwarded to you on request.

David Bartos

David Bartos
Legal Member acting under delegated powers
14 January 2020

