

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF ELEANOR MANNION, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

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

in connection with

Bir, 10 Garland Place, Dundee, DD3 6HE

Case Reference: FTS/HPC/LA/18/1108

Danielle Cameron ("the Applicant")

Rockford Properties ("the Respondent")

1. On 16 May 2018 an application was received from the Applicant. The application was made under Rule 95 of the Chamber Procedural Rules being an application by a tenant to enforce the letting agent Code of Practice. Part 5 of the Application, which requires the applicant to set out what section of the Code of Practice he or she is relying on, indicated that the applicant is relying on Section 5 of the "Management and Maintenance". In addition, the applicant lodged a paper apart, setting out further detail of the claim, correspondence between the applicant and the Respondent and photographs taken of the property.
2. Amongst the attached correspondence is an email from the Applicant to Kirsty McBain of Rockford Properties dated 5th May 2018. This email sets out a number of concerns that the Applicant has relating to recent repairs to the property. The email states "*I would always like to take the opportunity to notify you that I will be sending in forms to the Housing Chamber explaining this company's negligence during the whole issue on Monday...I would also like to note that when I was informed work was taking place on the property, Rockford did not offer me temporary living facility during this time which I am aware you are legally required to do. This whole situation has been a breach of the contract and I refuse to put up with this nonsense anymore*" A further email was sent by the Applicant to the same Kirsty McBain of Rockford Properties on the 10th May 2018 stating "*I have paid for a service since August which I have not received. I am surprised after that [sic] having had so many issues in the past, your company would not have been more accommodating in making sure all things were complete and that I was a satisfied tenant. This job should not have taken over two months to be completed. Could you please inform the landlord that I am extremely unhappy with the service that I have received and they will be notified about my complaint made to the*

Housing Chambers".

DECISION

3. The Legal Member 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;

(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; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, the Legal Member considers 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.**

REASONS FOR DECISION

5. '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"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. Section 48 of the Housing (Scotland) Act 2014 provides the following:

48 Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

...

(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

7. Although the Applicant has written to the letting agent outlining her concerns with various issues relating recent repairs to the property, stating that an application may be made to the Housing and Property Chamber of the First Tier Tribunal as a result, these emails do not reference the Letting Agent Code of Practice. There is no explicit mention of the Code, no reference to specific sections that the Applicant believes have been breached, no detail as to how, in the Applicant's view, the Code has been breached. Rather the email of the 8th May 2018 in particular refers to the Respondent breaching the contract with the Applicant. The Tribunal does not have jurisdiction to hear breach of contract cases. There is no provision in either of these emails for the opportunity for the letting agent to rectify the alleged breach.
8. Further the two emails were sent on the 8th and 10th May 2018 while the Application to the Housing and Property Chamber of the First Tier Tribunal on the 14th May 2018.
9. It is the view of the Legal Member that although the Applicant has expressed her dissatisfaction with the Respondent, she has failed to comply with the provisions of Section 48 above, in particular Section 48(4) and 48(5). Notification must be given to the letting agency of the breach of the Code of Practice, allowing reasonable time for the letting agent to rectify the breach. An application cannot be accepted and considered with this notification. Accordingly, this application is rejected on the grounds that it is frivolous as it is misconceived and has no prospect of success.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the 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 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. Information about the appeal procedure can be forwarded to you on request.
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Ms Eleanor Mannion
Legal Member
22 May 2018