



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/CV/19/1401

Re: 5/2 Minto Place, Hawick, TD9 9JL ("the Property")

Parties:

Mrs Jinnan Zhang ("the Applicant")

Bannerman Burke ("Applicant's Representatives")

Miss Lesley Rafferty ("the Respondent")

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 70 on 9 May 2019. The application sought payment in respect of rent arrears of £2,850. The following documents were enclosed with the application:
 - (i) Tenancy Agreement commencing 27 January 2017;
 - (ii) Form AT5 dated 27 January 2017;
 - (iii) Rent Statement dated 18 December 2018.

Alan Strain

Reasons for Decision

2. The Tribunal 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;·
(c) they have good reason to believe that it would not be appropriate to accept 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."

3. '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*".

4. The application was not signed or dated. The Tribunal wrote to the Applicant's agents by letter of 10 May 2019 asking for the application to be signed and dated. The Applicant's agents responded on 28 May 2019 with a signed and dated version of the application.

5. The application was considered by a legal member of the Tribunal on 4 June 2019. The Tribunal wrote to the Applicant's agents requesting a statement of rent arrears that showed how the sum claimed had been calculated. The Tribunal asked for a response by 18 June 2019.

6. No response was received from the Applicant's agents by 18 June 2019. The Tribunal wrote again on 25 July 2019 requesting a response by 1 August 2019 failing which the application may be rejected.

6. No response was received by 1 August 2019. In light of the failure to respond the tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The tribunal considered that the application was frivolous, misconceived and had no prospect of success given that the information produced did not show the arrears in the amount claimed. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

Right of Appeal

Alan Strain

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.

Alan Strain

Legal Member/Chair

12 August 2019

Date