



Decision with Statement of Reasons of Helen Forbes, 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/21/1588

Re: 126/5 High Street, Edinburgh, EH1 1QS ("the Property")

Parties:

Ms Amber Heath ("the Applicant")

Cullen Property Limited ("the Respondent")

Tribunal Member:

Helen Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed 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 111 on 2nd July 2021. The grounds for the order was repayment of a landlord reimbursement charge of £144. The following documents were provided:
 - (i) Email correspondence
 - (ii) Change of Tenancy FAQ
2. The Tribunal considered the application and wrote requesting further information by letters dated 20 July, 5 August, 2 September and 13 October 2021. Following the letter of 20 July 2021, the Applicant submitted the tenancy agreement.

3. The Applicant was asked repeatedly to provide an explanation as to (a) the legal basis for claiming repayment of this sum; and (b) why the application was raised against the letting agent instead of the landlord. The Applicant was given time to provide the information on each occasion, and finally asked to provide the information by 27th October 2021, failing which the application may be rejected.
4. No response was received from the Applicant.
5. The application was considered again by a Legal Member on 15th November 2021.

Reasons for Decision

6. 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;

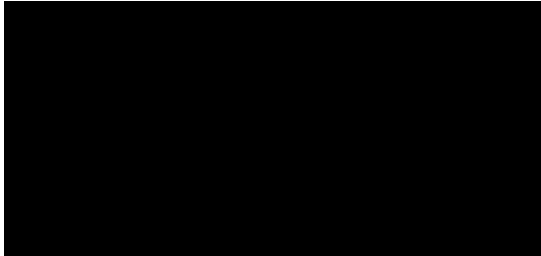
(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

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. The application seeks to proceed without explanation regarding the basis of the claim.
9. The application was made on Form F, which is the appropriate form for applying for an order for payment against a landlord. If the Applicant wished to make a claim that the letting agent had not complied with the Letting Agent Code of Practice, the appropriate form would be Form J.
10. The Tribunal could not grant an order in these circumstances.

11. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

Right of Appeal

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.



Legal Member/Chair

15th November 2021

Date