

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PR/19/1111

Re: Property at 2/2, 1612 Dumbarton Road, Glasgow, G14 9DB (“the Property”)

Parties:

Agbaraoluwa Oladiran, plot 448 Close17, Mayfair Garden Estate, Lekki, Lagos, Nigeria (“the Applicant”)

Iwona Grazyna Majzuk-soska, 2/2, 1612 Dumbarton Road, Glasgow, G14 9DB (“the Respondent”)

1. On 10 April 2019, an application was received from the Applicant. The application was dated 5 April 2019. The application was made under Rule 103 of the Chamber Procedural Rules being an application for an order for payment where landlord has not paid the deposit into an approved scheme.
2. Several further information requests were made to the Applicant including, on 2 May 2019 when the Applicant was requested, to provide a copy tenancy agreement or an explanation why it was not available; to confirm the end date of tenancy and provide if available evidence of the date of the end of the tenancy; and to clarify if the application was being made under Rule 103 of the Chamber Procedural Rules.
3. By email of 16 May 2019 the Applicant emailed the Tribunal office and advised that no tenancy was held as the landlord had refused to issue one; that the Respondent never provided an end of tenancy date, but the Applicant attached to the email a copy of the flight ticket showing that the Applicant left the United Kingdom on 1 January 2019 and the Applicant further advised that the tenancy immediately ended on 30 December 2018; and that the application was being made under Rule 103 of the Chamber Procedural Rules.

DECISION

4. I have considered the application 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.”

5. After consideration of the application, I consider 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

6. “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. 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”*. It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.
7. The Tenancy Deposit Schemes (Scotland) Regulations 2011 provide that:-
- 9.—(1) A tenant who has paid a tenancy deposit may apply to the [Housing and Property Chamber First Tier Tribunal] for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*
- (2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.*
8. One of the requirements therefore of the regulations is that any application to the tribunal for an order that the landlord did not comply with its duty under regulation 3, must be made no later than 3 months after the tenancy has ended. In the present case the Applicant has provided information which states that the tenancy ended on 30 December 2018. The Application was received by the Tribunal on 10 April 2019 which is a date later than 3 months after the tenancy ended.
9. The tribunal must be satisfied that the requirements of the regulations have been met, in this case it appears that the application has not been made within the 3 month period as required by regulation 9. Accordingly, I do not consider that the First-Tier Tribunal could competently entertain this application.
10. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met and the application should therefore be rejected.

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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Melanie Barbour
Legal Member/Chair

17 June 2019
Date