

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

128 Raeberry Street, Glasgow

Case Reference: FTS/HPC/PR/19/3966

- (1) SHONA PEARSON, 20 Kirk Place, Bothwell, Glasgow, G71 8DU;
(2) LILY FITZGERALD, 109 Marchmont Road, Edinburgh EH9 1HA ("the Applicants")

**EDZELL PROPERTY MANAGEMENT, 1008A Pollokshaws Road, Glasgow G41 2HG ("the
Respondent")**

BACKGROUND

1. On 12 December 2019 the Applicants lodged an application for repayment of the joint deposit paid by them to the Respondent in connection with their expression of interest in the letting of a flat at 128 Raeberry Street, Glasgow ('the property'). The application stated that no verbal or signed tenancy agreement had been entered into by the Applicants. It also stated that the Respondent, the letting agent, was awaiting instructions from the landlord in connection with the return of the deposit. The

correspondence produced by the Applicants shows that after viewing the property on 25 November 2019 the Applicants withdrew their interest on 26 November 2019 and the Respondent commenced to re-market the property. While the Applicants had applied to the Respondent to let the property, there is no indication that the Respondent or the owner of the property ever agreed to let it to them before they withdrew their interest.

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, the Applicants were never tenants of the property and the Respondent was never a landlord.
6. Furthermore, the powers of the Tribunal to grant remedies are restricted to claims arising from a private residential tenancy (section 71 of the Private Housing (Tenancies) (Scotland) Act 2016). The claim made by the Applicants does not arise from a private residential tenancy. No such tenancy was ever entered into. It follows that the Tribunal simply has no power to order the repayment of the deposit. That power appears to remain with the sheriff court.
7. In 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.
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) and on the same basis I have good reason to believe that it would not be appropriate to accept this application and send it to a case management discussion for further consideration. The application must therefore be rejected.

What you should do now

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.

David Bartos

Legal Member acting under delegated powers

18 December 2019