

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)

Chamber Ref: FTS/HPC/PR/19/4023

Re: Property at 58J Linkfield Road, Musselburgh EH21 7NT (“the Property”)

Parties:

Muntha Asif and Faiz Gulzar, 111 Milligan Drive, Edinburgh, EH16 4XD (“the Applicants”)

Andrew Hastie, Melvinhall Farm, Cousland, Dalkeith, EH22 2PD (“the Respondent”)

Shirley Evans (Legal Member)

BACKGROUND

1. On 19 December 2019 an application dated 18 December 2019 was received from the Applicants under Rule 103 of the Rules, being an application for an order for payment where a Landlord has failed to carry out duties in relation to a tenancy deposit.
2. The application was not accompanied by a copy of the tenancy agreement despite the application stating it did. Accordingly the application did not comply with Rule 103(b) of the Rules which states the application must be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give. The application did not state when the tenancy had commenced.
3. Further the application did not state when the end date of the tenancy was, despite stating the tenancy had ended. Accordingly the application did not comply with Rule 103(c) of the Rules which states the application must be accompanied by evidence of the date of the end of the tenancy (if available).
4. On 20 December 2019 the Tribunal wrote to the Applicants to request a copy of the tenancy agreement, an email and bank statements which the application stated were included but were not. The documents had to be provided by 27 December 2019. There was no response from the Applicants.

5. On 17 January 2020 the Tribunal wrote to the Applicants to provide the following by 31 January 2020 -
- a copy of the tenancy agreement, or if this was not available, as much information about the tenancy that the Applicants could give;
 - confirmation of the end date of the tenancy
 - a copy of the email and bank statements referred to in the application or confirmation that the applicants wished the Tribunal to consider the application without these documents and
 - confirmation if available that none of the three approved tenancy deposit schemes had the deposit lodged with them. There was no response from the Applicants.
6. On 12 February 2020 the Tribunal wrote to the Applicants with reference to the letter of 17 January 2020 asking for a response by 19 February 2020. There was no response from the Applicants.
7. The application was considered by the Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

8. The Legal Member considered the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable

period from the date of request as the Chamber President considers appropriate.

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;

...

(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.

Further, Rule 103 governing the application provides:

Where a tenant or former tenant makes an application under regulation 9 (court orders) of the 2011 Regulations, the application must—

(a) state—

(i) the name and address of the tenant or former tenant;

(ii) the name, address and profession of any representative of the tenant or former tenant; and

(iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the tenant or former tenant can give;

(c) evidence of the date of the end of the tenancy (if available); and

(d) be signed and dated by the tenant or former tenant or a representative of the tenant or former tenant.

9. After consideration of the application 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 Rules.

REASONS FOR THE DECISION

10. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, [1997] *EWCA Civ 1575*. 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 this definition that the Legal Member has considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
11. In terms of Rule 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, a Landlord must lodge a tenancy deposit with a scheme administrator within 30 working days of the beginning of the tenancy. The Applicants provided no information in the application or by reference to a tenancy agreement, despite being asked to do so, that would enable the Tribunal to determine when in the particular circumstances any tenancy deposit should have been lodged.
12. In terms of Rule 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011, an application seeking payment of up to three times the amount of the deposit under Rule 10 must be made within 3 months after the tenancy has ended. The Applicants provided no information that would enable the Tribunal to determine when the tenancy had actually ended, despite being asked to do so.
13. The Legal Member is accordingly satisfied that the current application is not supported by the required documents or information under Rule 103 of the Rules. The application fails to meet statutory requirements and is insufficient as a basis for an application for an order for payment where the landlord has failed to carry out duties in relation to a tenancy deposit in terms of Rule 103 of the Rules.
14. For the foregoing reasons, the Legal Member does not consider there to be any prospect of success of this application. The application is accordingly rejected on the basis that the application is frivolous.

RIGHT OF APPEAL

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:-

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.

S.Evans

Legal Member/Chair



Date

5 March 2020