

Housing and Property Chamber
First-tier Tribunal for Scotland



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/EV/19/4054

Re: 22 Boyd Street, 1st Floor, Glasgow, G42 8AW ("the Property")

Parties:

Ms Solanki Mitra ("the Applicant")

Mr Terry Healey ("the Respondent")

Tribunal Member:

Alan Strain (Legal Member)

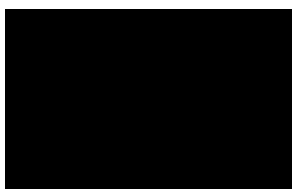
Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be 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 103 on 23 December 2019. The application was in respect of an alleged failure of the Landlord to protect a tenancy deposit under the ***Tenancy Deposit Schemes (Scotland) Regulations 2011 (Regulations)***. The following documents were enclosed with the application:

- (i) Bank transaction document;
- (ii) Police files;
- (iii) Email correspondence.



2. The application was considered by the Tribunal and further information was requested by letter of 24 December 2019. The Applicant was asked for (amongst others) to confirm the date the tenancy terminated.

The Applicant was given until 7 January 2020 to respond failing which the application may be rejected.

3. No response was received and the Tribunal asked for this information again by letter of 15 January 2020. The Applicant responded by email of 20 January 2020 confirming that she moved elsewhere on 25 August 2019. The Tribunal are treating that as the date of termination of the tenancy.

4. The application was considered again by a Legal Member on 28 January 2020.

Reasons for Decision

5. 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-

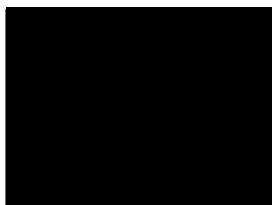
(a) they consider that the application is frivolous or vexatious;
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

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. 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".*

7. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Regulation 9.2 provides that such applications should be made no later than 3 months after the tenancy has ended. The Applicant has submitted her application more than 3 months after the tenancy has terminated. The application is out of time and the Tribunal cannot grant the order sought.

8. 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

28 January 2020

Date