



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/PR/22/3012

Parties

Mr Liam Donowho (Applicant)

Mr Kenny Degan (Respondent)

71 Church Street, Dumfries, DG2 7AT (House)

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 22 August 2022. 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)**.

2. The application was considered by the Tribunal on 24 August 2022. The Applicant was asked to provide further information as follows:

“Before a decision can be made, we need you to provide us with the following: 1. You have indicated that the tenancy is continuing. However, if the tenancy comes to an end you must provide the Tribunal with your new address and the date it came to an end. Please also note that the application and all required documents and information must be lodged no later than 3 months after the tenancy has ended. 2. The application form states that you are seeking the return of the deposit or for it to be applied to rent arrears. Please note that an application under Rule 103 can only be used to seek a penalty of up to three times the deposit. Please provide an amended form which specifies the correct order being sought and does not refer to repayment. A separate application can be submitted for repayment under Rule 111, after the tenancy has ended, but not if the deposit is currently lodged in a scheme. 3. Please provide evidence of the date of lodging of the deposit. The tenancy deposit scheme can provide this. 4. If the family member who submitted the form is to represent you, please provide contact details and written authority for this. Otherwise, all correspondence will be sent to you. Please reply to this office with the necessary information by 12 September 2022. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant did not respond. The Tribunal wrote again by letter of 27 September 2022:

“Your application has been referred to a legal member. The legal member responds as follows: 1. Please provide the information requested in the tribunal’s letter to you of 26 August 2022. You are again reminded that the application and all required documents and information must be lodged no later than 3 months after the tenancy has ended. Please reply to this office with the necessary information by 11 October 2022. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received.

Reasons for Decision

4. 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."

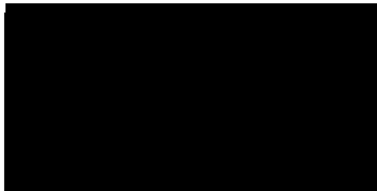
5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*".

6. The application seeks to proceed under Rule 103 and Regulation 9 of the Regulations. Rule 103 is in respect of applications where it is alleged the landlord has failed to protect a tenancy deposit. The Applicant has failed to provide necessary information. The Tribunal cannot grant an order under Rule 103 without the information requested.

7. 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.



24 November 2022

Legal Member/Chair

Date