



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/CV/25/0156

Parties

Miss Samantha Mayor (Applicant)

Bealltainn Cottage, Carbostbeag, Carbost, IV47 8SE (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 that the application is frivolous or vexatious in terms of Rule 8(1)(a).

Background

1. The application was received by the Tribunal under Rule 111 on 15 January 2025.
2. The application was considered by the Tribunal and further information was requested by email of 23 June 2025. The Applicant was asked:

"You were previously asked to provide detail details of the tenancy agreement between you and the respondent. You have indicated there was no written agreement between you. You have provided no details of what was actually agreed and when? How did Mr Fowlie come to be living in your home? When did it start? When did it end? What payment arrangement was made between you when he moved into the property? Did he occupy a room in a house that you own and that you also lived in? If so, on what basis is his occupation of that property a private residential tenancy under

and in terms of the Private Housing (Tenancies) (Scotland) Act 2016? Please note that this tribunal only has jurisdiction to deal with disputes arising from private residential tenancies (or other tenancies created in terms on the other older Acts of Parliament). If the arrangement you had with Mr Fowlie was not a private residential tenancy then any claim you may have against him in respect of the costs of his occupation and other charges would fall to be pursued at the local sheriff court We would strongly suggest that you seek independent legal advice on this matter prior to responding. Please either respond with evidence that the arrangement between you and the respondent was a private residential tenancy agreement or confirm that you now seek to withdraw this application Further queries may arise upon receipt of your reply. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please respond to this letter within the next two weeks. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Please reply to this office with the necessary information by 7 July 2025. If we do not hear from you within this time, the President may decide to reject the application."

3. The Applicant responded by email of 7 July 2025 in which she confirmed that the Respondent lived in her home, occupying the living room while she occupied the bedroom.

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 Applicant is a resident landlord as defined in paragraph 7 of Schedule 1 of the Act. As such the tenancy cannot be a Private Residential Tenancy under the Act and the Tribunal has no jurisdiction to deal with her application.

The Application is 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.

Alan Strain

1 August 2025

Legal Member/Chair

Date