



Decision with Statement of Reasons of Karen Moore, 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 (Procedure) Regulations 2017 (“the Rules”)

Case reference FTS/HPC/PR/24/5219

Parties

Mrs Penelope Wheeler (Applicant)

Mr Colin McNeill (Applicant’s Representative)

20B Abercromby Place, Edinburgh, EH3 6LB (House)

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 would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal on 12 November 2024 under Rule 110 of the Tribunal Rules and Section 57 or Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. The application was considered by the Tribunal and found to be defective as it did not conform to the Tribunal Rules nor did it proceed on the correct statutory basis. The Applicant's Representative was contacted by email on 17 December 2024, 13 February 2025, 31 March 2025 and 30 May 2025 which emails set out clearly the various defects in the application and the information and documentation required to allow the application to proceed. Advice was given that legal advice should be taken. Although replies were received, the replies did not allow the application to be accepted.
3. In the last email of 30 May 2025, the Applicant's Representative was advised that the application had no statutory basis as the tenancy to which it refers is not a private residential tenancy in terms of the 2016 Act and so could not be accepted. He was advised that the application should be withdrawn or it would likely be rejected.
4. By email dated 13 June 2025, the Applicant's Representative wrote: *"I am disappointed to hear that my claim appears to have been ruled out because the tenancy started prior to 1 December 2017. Is there not protection under the previous Housing Act? If not this would appear to be a huge loophole. It would also appear to me that while the tenancy was originally signed in 2015 the fact that it was still in place after 1 December 2017 and existed through to 2014 with regular new agreements when the rent was raised should surely give the tenant protection. I have no desire to withdraw the application but also do not have the finances to employ a solicitor. I will therefore have to leave it to you to make a decision on this claim. I am feeling let down by this process and I cannot understand why there is not protection in place to help tenants when the landlord removes them simply to re-market the property at a substantially higher rent."*
5. Accordingly, no indication was given that the correct information and documentation would or could be submitted to comply with the 2016 Act or the Tribunal Rules.

Reasons for Decision

6. 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."*

7. The Tribunal cannot grant the application if it is incomplete, proceeds on the wrong basis and does not conform to the Tribunal Rules. As the Applicant's Representative on her behalf been given clear information on the defect in the application and has been given fair notice that the application might be rejected, the Tribunal considers that there is no prospect of the application being acceptable in terms of the Tribunal Rules. Accordingly, there is good reason to believe that it would not be appropriate to accept the application and so 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.

Legal Member

15 July 2025

