



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 8(1)(c) and 26 of The First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/CV/25/3763**

**Re: Property at 5 Comiston Rise, Edinburgh, EH10 6HQ (“the Property”)**

**Parties:**

**Ms Agnieszka (Agnes) Jasinska, 288 Ferry Road, Edinburgh, EH5 3NP (“the Applicant”)**

**Tribunal Member: Ruth O’Hare (Legal Member) with delegated powers from the Chamber President.**

**Decision**

The Tribunal rejects the application by the Applicant received by it on 3 September 2025 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

**Background**

- 1 This is an application for a payment order under rule 111 of the Rules and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was received by the Tribunal on 3 September 2025.
- 2 In terms of rule 5(2) of the Rules, a Legal Member with delegated powers from the Chamber President reviewed the application to assess whether it had been lodged in the required manner. Following said review the Tribunal wrote to the Applicant on 22 September 2025 in the following terms:-

*“A Legal Member of the Tribunal has now reviewed your application. It is noted that you were living in the same property as your landlord, under the terms of a Lodger Agreement. Unfortunately, this means that you do not appear to have a right of action through the Tribunal process against your resident landlord. The reason for this is that the Tribunal’s jurisdiction is determined by legislation and only applies to certain types of tenancy agreements, which excludes lodger agreements. You may, however, have a right of action in the Sheriff Court. It is suggested that you seek independent advice on this matter and consider*

*withdrawing your application to the Tribunal. Otherwise, it is likely that your application will be formally rejected. You may also find some relevant guidance information on the Tribunal's website (Housing and Property Chamber)."*

- 3 The Tribunal received no response from the Applicant. On 5 November 2025 the Tribunal wrote again to the Applicant requesting a response to the Tribunal's information request of 22 September 2025, failing which the application may be rejected.
- 4 On 19 November 2025 the Applicant emailed the following response to the Tribunal:-

*"Here is the supporting information. I'm not sure what else to include or what is required.*

*In brief, my landlord charged me for things we never agreed on - the days before the official start of the tenancy, when he gave me permission (by email) to bring my possessions over but never mentioned there would be a cost. I believe it was in retaliation for my moving out after only two months (because of other growing costs like energy bills and the restrictions on use of the spaces that were supposed to be shared).*

*My tenancy started on July 1, as per my signed contract with the landlord, but I brought my things over to the flat starting on June 27. Again, I had no idea there would be additional cost for it. I was short on my money (the whole reason for giving up my own flat and seeking a house share situation for the first time in my life)."*

The Applicant provided various documents with the email, including email correspondence and a document titled "Lodger Agreement".

### **Reasons for decision**

- 5 The Legal Member considered the application in terms of the Rules and determined that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application."
- 6 An application under rule 111 of the Rules can only be made where the tenancy in place between the parties is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). In terms of paragraphs 7 and 8 of schedule 1 of the 2016 Act a tenancy cannot be a private residential tenancy where a landlord is a resident landlord. Paragraph 8 in particular provides that a tenancy cannot be a private residential tenancy if:-

*“(a)the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and*

*(b)from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—*

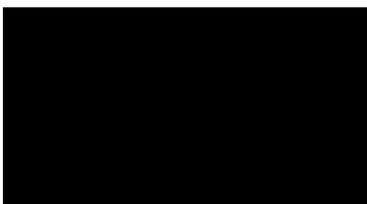
*(i)has the interest of the landlord under the tenancy, and*

*(ii)has a right to use the shared accommodation in the course of occupying that person's home.”*

- 7 The Applicant has confirmed in correspondence with the Tribunal that she lived with the Respondent at the property during the term of the tenancy. She has provided a document titled “Lodger Agreement” which confirms that she was renting a room in the property, with the right to use shared areas in common with the landlord. I am therefore satisfied that there is sufficient information before the Tribunal to establish that the tenancy meets the criteria outlined in paragraph 8 of schedule 1 of the 2016 Act. The tenancy between the parties is not a private residential tenancy and the Applicant cannot therefore rely upon rule 111.
- 8 The Applicant has not identified any other relevant rule under which the application can proceed, and there is no other rule I can identify that gives the Tribunal jurisdiction to consider the application. On that basis I have concluded that the application should be rejected under Rule 8(1)(c) as it would not be appropriate to accept the application.

**NOTE: What you should do now.**

**If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: A party aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.**



**Ruth O’Hare, Legal Member**

**9 December 2025**