



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/PR/21/1881

Parties

Mr Ryan Pulling (Applicant)
Mr Phillip Boyle (Respondent)

123 Alness Street, Hamilton, ML3 6TF (House)

1. On 6.8.2021 an application was received by the Tribunal (FTT) from the applicant. The application was initially made under rule 89(4) and the application showed that the applicant wished to have the sum of £200 returned to him, which he had paid to secure a spare room in a property as he was unable to move into it.
2. The applicant was initially advised that rule 89 related to alteration of rent and not to repayment of a deposit and thus could not possibly apply in this case. He thereafter changed the application to rule 111.
3. In letters of 20.8., 2.9., 21.9. and 28.10. the applicant was asked whether the room he was to rent was in a property also occupied by the prospective landlord and it was explained to the applicant that if this was the case the FTT would not have jurisdiction.

He was given the opportunity to make representations to explain why he thought that the FTT might have jurisdiction. Ultimately he did not address this matter in his correspondence.

4. He did confirm that the landlord/respondent was living in the property into which the applicant had initially intended to move and for which he had paid the £200.
5. The text messages lodged with the application show that the moving in date was to be 12 July 2021.
6. The application documents and the correspondence between the applicant and the FTT are referred to for their terms and held to be incorporated herein.

DECISION

7. I considered the application in terms of Rule 8 of the 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;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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."

8. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

Applicable legislation:

Procedural Rules:

Application for civil proceedings in relation to a private residential tenancy

111. Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

- (a) state—
 - (i) the name and address of the person;
 - (ii) the name and address of any other party; and
 - (iii) the reason for making the application;
- (b) be accompanied by—
 - (i) evidence to support the application; and
 - (ii) a copy of any relevant document; and
- (c) be signed and dated by the person.

Private Housing (Tenancies) (Scotland) Act 2016

1 Meaning of private residential tenancy

- (1) A tenancy is a private residential tenancy where—
 - (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,
 - (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
 - (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

71 First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—

- (a) the prosecution of a criminal offence,
- (b) any proceedings related to such a prosecution.

Schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016

Resident landlord

7A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a 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.

9(1) This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.

(2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.

(3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—

- (a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or
- (b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).

(4) For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

- (a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—
 - (i) 28 days later, or
 - (ii) 6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,
- (b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).

9. For any tenancy commencing after 1.12.2017 the jurisdiction of the Tribunal in civil matters could only arise out of S 71 of the Private Housing (Tenancies) (Scotland) Act 2016. Rule 111 relates to applications made under said S 71 of the 2016 Act.

10. The tenancy would have commenced on 12.7.21 and thus the FTT's jurisdiction would have to arise out of S 71 of the 2016 Act. This requires that the tenancy would be a Private Residential Tenancy (PRT). The term is defined in S 1 of the 2016 Act. In terms of S 1 (1)

(c) of said Act a tenancy cannot be a PRT if it is excluded in terms of schedule 1 of the 2016 Act.

11. Schedule 1 para. 7 excludes tenancies with a resident landlord from being a PRT.

12. The applicant had confirmed that the room he was to rent was situated in the property in which the landlord and respondent lived. Thus the tenancy is not a PRT in terms of S 1 of the 2016 Act. S 71 of the 2016 Act does not confer jurisdiction of matters arising out of that tenancy to the FTT. The application cannot be made under rule 111.

13. The Tribunal does not have jurisdiction in the case and it would thus not be appropriate to accept the application.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the 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 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. Information about the appeal procedure can be forwarded to you on request.

Petra Hennig McFatridge

Legal Member

18 November 2021