

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF YVONNE MCKENNA, 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 Rules")**

**Chamber Ref: FTS/HPC/PR/19/2875**

**Re: 55 Tillycairn Road, Glasgow, G33 5HZ("the Property")**

**Parties:**

**Ms. Natasha Rasool, Flat 1/3, 105 Barrland Street, Glasgow, G41 1RF ("the  
Applicant")**

**Mr. Marty Donnelly, Desert Lane 11, Armagh,BT61 8AR ("the Respondent")**

**Tribunal Member:**

**Yvonne McKenna (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the application should be rejected on the basis that  
it is not appropriate to accept the application within the meaning of Rule  
8(1)(c) of The First-tier Tribunal for Scotland Housing and Property Chamber  
(Procedure) Regulations 2017 (" the 2017 Regulations").**

**Background**

1. The application was received by the Tribunal under Rule 87 of the 2017 Regulations on 13<sup>th</sup> September 2019. The application is to recover an unlawful premium. The Applicant sought to recover from the Respondent an unlawful premium which had been charged in anticipation of the grant of a private residential tenancy of the Property. The premium paid was SIX HUNDRED AND

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FIFTY POUNDS (£650) which was apparently paid as a "holding deposit" for a lease. The following documents were enclosed with the application:

- (i) Bank Statement evidencing payment .
  - (ii) Copy decision of the Tribunal in Conaghan & Szabo v Julie Campbell FTS/HPC/PR/18/204 & FTS/HPC/PR/18/0206
2. Prior to raising the application with the Tribunal the Applicant attempted to raise proceedings in Glasgow Sheriff Court. A warrant was refused after a Sheriff determined without issuing a note of explanation that the matter should properly be raised with the Tribunal.
3. The application form, and the proof of payment indicated that the Applicant expressed desire to take a lease of the Property. The Applicant attended at the Property and met the Respondent at the Property during September 2018. The Respondent asked the Applicant to pay him the sum of £650 as a deposit to "secure" the rental of the Property. On 18<sup>th</sup> September 2019 the Applicant paid the sum of £650 to the Respondent by way of bank transfer. The Respondent agreed to carry out necessary repairs to the Property in advance of the tenancy agreement being signed and the Applicant taking occupancy. The Applicant later became concerned about the quality of the repairs which had been carried out and advised the Respondent that she no longer wished to enter a tenancy agreement and requested the return of the £650. The Respondent refused .No lease was signed. The Applicant never entered into possession or occupation of the Property. The Applicant did not make payment of rent for the Property.

## DECISION

- 4. The Legal Member considered the application in terms of Rule 8 of the 2017 Regulations. 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*

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*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."*

- 5. After consideration of the application and the attachments from the Applicant, the Legal Member considers that the application should be rejected on the basis that there is good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.**

## **REASONS FOR DECISION**

- 6. In relation to the application under Rule 87, unlawful premiums are prohibited in terms of the Rent (Scotland) Act 1984,(the 1984 Act). Section 82 of the 1984 Act states;-**

82 (1)Any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires... the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.

(2)Any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium... shall be guilty of an offence under this section.

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(3) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.

(4) The court by which a person is convicted of an offence under this section relating to requiring or receiving any premium may order the amount of the premium to be repaid to the person by whom it was paid.

**Section 1 of the 1984 Act states;-**

(1) A tenancy under which a dwelling-house (which may be a house or part of a house) is let as a separate dwelling is a protected tenancy for the purposes of this Act unless—

(a) the rateable value of the dwelling-house on the appropriate day exceeded or, as the case may be, exceeds £200, or in the case of a dwelling-house comprising or forming part of lands and heritages for which a rateable value is or was first shown on the valuation roll on or after 1st April 1978, £600; or

(b) the tenancy is one with respect to which section 2 below otherwise provides; or

(c) by virtue of section 4 or 5 below, the tenancy is for the time being precluded from being a protected tenancy by reason of the body or entity in whom the landlord's interest is vested; or

(d) by virtue of section 6 below, the tenancy has at all times since it was granted been precluded from being a protected tenancy;

and any reference to a protected tenant shall be construed accordingly.

**7. The Property was never in fact let to the Applicant. No lease was entered into. The Applicant never entered into occupation of the Property. No rent was ever paid.**

**8. In the circumstances the Tribunal considers that given the absence of any tenancy, the Tribunal has no powers open to it to grant the orders sought or to accept the application.**

**9. Accordingly, for this reason, this application must be rejected upon the basis that the Tribunal is of the view that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.**


What you should do now

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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.

Yvonne McKenna



Yvonne McKenna  
Legal Member  
3<sup>rd</sup> October 2019