

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/22/0615

47 Lenzie Way, Glasgow, G21 3TB ("the Property")

Parties:

Mr Ying Peng Wang, 461A Finchley Road, London, NW3 6HN ("the Applicant")

Mears Group, Calder House, Ellsmuir Way, Tannochside Business Park, Uddingston ("the Respondent")

At Glasgow on 8th April 2022, Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland acting under delegated powers of the Chamber President rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules.

Reasons

1. This is an application for an order of eviction in respect of the Property. It is dated 2nd March 2022.
2. The Applicant erroneously submitted an application under Rule 91 of the Chamber Rules and then sought to amend it to be an application under Rule 109.
3. The documentation submitted by the Applicant purported to show that a

tenancy in respect of the Property commenced on 26th August 2019. On that basis, I allowed the application to be amended.

4. The Property is owned by Dimonte Properties Ltd and, although the Applicant was asked to explain the relationship between this company and the purported landlord, none was provided.
5. The Applicant submitted an unsigned document entitled “Lease” where the parties were stated to be the Applicant and Mears Ltd, Innova House, Kinetic Crescent, Enfield, London. The document referred to 61A Lenzie Place. The Applicant has submitted another application in respect of that property and I have assumed that the document produced is intended to refer to the Property. The document stated that the lease for the Property was for a period of five years commencing on 26th August 2019.
6. The Applicant submitted various copy emails which appeared to show that the Respondent had served notice to terminate the tenancy but that there were still “service users” in the Property after the purported date of termination. It was clear from the terms of the “Lease” and email exchange that the purpose of any contractual arrangement between the parties was to facilitate the accommodation of asylum seekers in the Property,
7. Provisions of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”):

Section 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.*

Schedule 1, Paragraph 18

Asylum seekers

A tenancy cannot be a private residential tenancy if the purpose of it is to provide accommodation for asylum-seekers or their dependents in accordance with section 4 or Part VI of the Immigration and Asylum Act 1999.

8. Rule 8(1) (a) of the Rules allows an application to be rejected by the Chamber President or another member acting under delegated powers if “*they consider that an application is vexatious or frivolous*”. “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”.
9. I consider this application to be frivolous which has no reasonable prospect of success. I do not consider that the Applicant has established the existence of a private residential tenancy. He had submitted a “Lease” which was unsigned where the tenant was stated to be Mears Ltd. A limited company would fall outwith the definition of “tenant” as stated in Section 1 of the 2016 Act and whatever contractual arrangement had been established between the parties, it was not a private residential tenancy.
10. For some reason, the Application had submitted the application with the “Mears Group” as Respondent with no explanation as to the relationship between it and Mears Ltd.
11. I did not require to determine matters on the basis of whether or not the unsigned “Lease” could be relied on, questions of ownership of the Property or whether or not the provisions of the Immigration and Asylum Act 1999 were engaged. Although it seemed clear, from what had been produced, that the Property was to be used to accommodate asylum seekers, the fundamental ground for rejection is that what had been submitted did not evidence the existence of a private residential tenancy.
12. Further, in terms of Rule 8 (1) (c) of the rules, I have good reason to consider that it would not be appropriate to accept this application. The Tribunal has no jurisdiction to determine any matters with regard to contractual arrangements which might flow from the Lease Document submitted even if a signed copy had been produced.

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:

An applicant 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.

Martin J. McAllister
Legal Member
8th April 2022

