



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mr Erik Spaans in terms of rule 111 of the Rules.

Case reference FTS/HPC/CV/22/3831

At Glasgow on the 23 May 2023, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules

1. This is an application by Mr Eric Spaans in terms of rule 111 for civil proceedings arising out of a private residential tenancy agreement (‘PRT’)
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 18 November 2022 seeking among other things, a copy of the tenancy agreement. This was provided by the applicant on 22 December 2022. The tribunal was thereafter in correspondence with the applicant with various matters in connection with his application.
3. The tenancy agreement provided by the applicant was dated 6 May 2021. The sole tenant is designed as Sothpaw Ltd.
4. The tribunal wrote to the applicant on 17 April 2023 as follows:
The tenant is a limited company and the lease you have provided is not a Private Residential Tenancy Agreement. Please explain on what basis you consider the Tribunal has jurisdiction to deal with your claim.
5. The applicant responded on 10 May 2023 as follows:

I do not know the answer to your question. The lease is in the name of a company, which is owned by my ex-tenant. I believe this company was created for this purpose, since there seems to be no activity with this

company. I did not realize that there is a difference in case of a claim. If you are not able to handle this case because, although the house is private (my house), but the lease contract is in the name of one of the companies of the ex-tenant, can you please let me know what I can do to recover my outstanding rent and other costs?

6. A private residential tenancy ('PRT') is a tenancy created on or after 1 December 2017 which meets the conditions of s1 of the Private Housing (Tenancies) (Scotland) Act 2016, ('the Act'). Section 1 provides:

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.

7. The use of the term 'individual' in section 1(a) is subject to the provisions of section 2 of the Act which states

2 Interpretation of section 1

(1) This section makes provision about the interpretation of section 1.

(2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.

(3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.

(4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—

(a) the terms of the tenancy entitle the tenant to use property in common with another person ("shared accommodation"), and

(b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

(5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

8. Section 2(2) therefore provides that a tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person. Stalker at page 295 of his book *Evictions In Scotland* states 'the effect of the reference to an 'individual' in section 1(1)(a) is to preclude a limited company or a partnership from holding a PRT as the sole tenant. However, given the

reference to 'another person' under section 2(2), it may hold a PRT as a joint tenant, provided at least one of the other joint tenants is an individual.

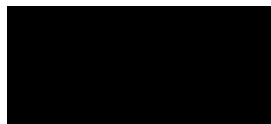
9. As this 'PRT' has Sothpaw Ltd as the sole tenant, in my view the property is not let to an individual and a PRT has not been constituted. A PRT may have been constituted if there were joint tenants with an individual in addition to Sothpaw Ltd. The property has been let to a limited company and this is a commercial matter and not a residential matter. Given a PRT has not been constituted the tribunal has no jurisdiction to deal with this matter.
10. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if ***"they consider that an application is vexatious or frivolous"***.
11. "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".
12. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as a PRT has not been constituted and the tribunal has no jurisdiction. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is a commercial matter and the tribunal have no jurisdiction.

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.



Legal Member