



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**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/21/3220**

**Re: 17/12 Milton Street, Edinburgh ("the Property")**

**Parties:**

**Reema Devi Shamloll ("the Applicant")**

**Lloyd Kilbride ("the Respondent")**

**Tribunal Member:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the Tribunal under Rule 111 on 15<sup>th</sup> December 2021. The Applicant was seeking return of her tenancy deposit in the sum of £900. The Applicant included a copy of a document entitled 'Terms and Conditions of Let' which described the let as a short term holiday let.
2. By email dated 22<sup>nd</sup> December 2021, the Applicant confirmed that the landlord was a live-in landlord, that the property was his main residence, and that the tenancy was not a short term let.
3. The application was considered by the Tribunal and further information was requested by email dated 17<sup>th</sup> January 2022, as follows:

The tribunal does not have jurisdiction to deal with tenancies where the landlord also resides at the property. An application to the Sheriff Court is required.

Please clarify whether the landlord is resident at the property which is the subject of the application and confirm if you wish to withdraw the application if the landlord was a resident landlord

The Applicant was given until 31<sup>st</sup> January 2022 to respond, failing which the application may be rejected.

4. By email dated 24<sup>th</sup> January 2022, the Applicant responded as follows:

Yes the landlord is a resident landlord, I had applied through the simple procedures claim on the Sheriff Court website and they told me they do not have jurisdiction for these rental disputes and redirected me to the Housing and Property Chamber and they did not accept the case. This is understandably very hard for me as I am a foreigner, just moved to Edinburgh and I had to deal with such a landlord because of the competitive rent market in Edinburgh. Please kindly advise me on what to do next.

5. The application was considered by a legal member and a further request for information sent out on 10<sup>th</sup> February 2022, requiring a response by 24<sup>th</sup> February 2022, requesting the following information, failing which the application may be rejected:

Unfortunately, the Tribunal does not have jurisdiction for this type of rental agreement.

We are unable to provide any advice, but you may wish to contact the Sheriff Court again to inform them of the response from the Tribunal.

It may also be helpful to contact an advice agency such as Shelter Scotland or the Citizens Advice Bureau for further assistance.

It would be helpful if you would respond within 14 days informing us if you wish to withdraw this application, failing which it is likely to be rejected.

6. No response was received.

7. The application was considered further on 21<sup>st</sup> March 2022.

### **Reasons for Decision**

8. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;·  
(c) they have good reason to believe that it would not be appropriate to accept the application;*

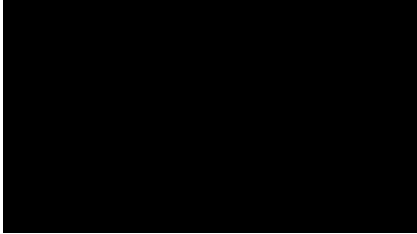
*(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph ( 1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."*

9. '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"*.
10. The Tribunal does not have jurisdiction to deal with this application. Rule 111 cases can only be made in respect of private residential tenancies in terms of the Private Housing (Tenancies) (Scotland) Act 2016. Rule 70 cases may be made in respect of regulated and assured tenancies. The tenancy in this case does not fall within either rule, or any other rule within The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended.
11. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.



Legal Member/Chair

21<sup>st</sup> March 2022  
Date