



**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/TE/23/2493

Parties

Regina Alonzi (Applicant)

Collete Scanlon-Riach (Respondent)

1 Connaught Place, Edinburgh, EH6 4QT (House)

A BACKGROUND

1. On 25.7.23 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application made under Rule 106 of the Procedural Rules. The applicant indicated she was seeking an order under S 15 of the Private Housing (Tenancies) (Scotland) Act 2016 (Act) and attached to the application a copy of a notice form under S 17 of the Act to the landlord dated 22.5.23, which referred to an application to the FTT to be made on the basis that the contract is ambiguous and states incorrect terms eg some of the deposit will be protected and

not all and that information had not been provided as required by S 11 of the Act. The notice is referred to for its terms.

2. On 16.8.23 the FTT wrote to the applicant in the following terms: “The information requested is required in terms of the Tribunal Rules. Regarding your rule 106 application (application to draw up terms where statutory terms is unlawfully displaced) : (1) please provide an address for the landlord. (2) We need to understand what terms you consider are missing from your tenancy agreement. With specific reference to the statutory terms set out in The Private Residential Tenancies (Statutory Terms)(Scotland) Regulations 2017, please tell us what terms you consider have been displaced. (3) We need to understand your reasons for making the application. Please tell us why you consider the terms have been displaced. Once we receive this information your application will be considered further. “ The applicant was given 14 days for a reply. No reply was received.
3. On 22.9.23 the FTT again wrote with a 14 day deadline to provide the previously requested information. No reply was received.
4. The correspondence lodged in this case is referred to for its terms and held to be incorporated herein.

B DECISION

1. 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."

- 2. 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.**

C RELEVANT LEGISLATION

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

106. Where the tenant makes an application under section 14(2) of the 2016 Act to draw up terms where statutory term is unlawfully displaced, which is the matter at issue on this application, the application must—

(a) state—

... (iii) the name and address of the other party to the private residential tenancy

(iv) Which of the statutory terms the person considers has been displaced and

(v) the reasons why the person considers the statutory term has been displaced.

The Private Housing (Tenancies) (Scotland) Act 2016:

14 Application to First-tier Tribunal to draw up terms

(1)The tenant under a private residential tenancy may (subject to subsection (3)) apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the landlord—

(a)has a duty under section 10 to provide the tenant with a document which sets out all of the terms of the tenancy, and

(b)the landlord has not provided that document to the tenant.

(2)Either the tenant or the landlord under a private residential tenancy may apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the tenant or landlord thinks that the written terms of the tenancy purport to displace a statutory term in an unlawful manner.

(3)The tenant may not make an application under subsection (1) unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.

(4)For the purpose of subsection (2), written terms of a tenancy purport to displace a statutory term in an unlawful manner if—

(a)the statutory term is not included in the written terms of the tenancy but is a term of the tenancy because regulations under section 7(3)(a) do not provide otherwise, or

(b)the statutory term, as expressed in the written terms of the tenancy, bears to be subject to a modification which is not permitted by regulations under section 7(3)(b).

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

(6)In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this section are to any one of those persons.

D REASONS FOR DECISION

1. The Application is made under Rule 106 of the Procedural Rules. Rule 106 of the Procedural Rules states that such an application must (a)state—
 - (iii) the name and address of the other party to the private residential tenancy
 - (iv) Which of the statutory terms the person considers has been displaced and
 - (v) the reasons why the person considers the statutory term has been displaced.

2. The applicant was asked on two occasions to provide the address of the landlord, who is “the other party of the private residential tenancy”. The applicant did not reply to either of the emails seeking this information. The deadline for the latest submission of this information has now passed. The applicant has not engaged any further with the application process since the FTT had requested further information and has not provided any answer to the repeated requests for further information. It appears that the applicant is no longer insisting on the application. The application to date remains

incomplete.

3. It would not be appropriate for the Tribunal to accept an application which does not meet all lodging requirements and is thus incomplete. The application is thus rejected.

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 McFatrige

Legal Member

26 October 2023