



**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/CV/23/1614

Parties

Ms Yuting Zheng (Applicant)

Mr Christopher McLauchlan (Respondent)

Flat 9/2, 104 Mavisbank Gardens, Glasgow, G51 1HR (House)

1. On 18.5.23 the First-tier Tribunal (FTT) received an application made under Rule 111 of the Procedural Rules being an application for Civil Proceedings in relation to a private residential tenancy in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) for "repayment of all the rent and triple the security deposit".
2. Over the course of the following months the FTT tried to establish whether the circumstances of the situation were such that the FTT had jurisdiction. The correspondence with the Applicant is referred to for its terms and held to be incorporated herein.

3. On several occasions the FTT had advised the Applicant that if the Respondent was not authorised to enter into a tenancy agreement for the property then the FTT would not have jurisdiction.
4. On 13.11.23 the Applicant provided the following information: I am writing to address the queries raised in your recent letter dated 10/31/2023. I appreciate your diligence in reviewing my application and provide the necessary details in response. 1. Amended Application Form: The amended application form is included as an attachment for your reference. 2. Source of Information on Chris McLaughlan: I became aware of Chris McLaughlan's identity through the property management agency. His name was provided to me by the agency, and I verified his identity through his WhatsApp profile picture, which matched his in-person appearance when I met him to make rental and deposit payments. I subsequently confirmed his identity with the property management agency. 3. Clarification on Tenancy Agreements: The tenancy agreement signed in October 2022 is indeed with Chris McLaughlan. 4. Understanding of Chris McLaughlan's Tenancy: Yes, I understood from the property owner's management agency that Chris McLaughlan was the tenant of the property. 5. Entitlement to Repayment of Rent: Chris McLaughlan collected a full year's rent from me. However, after entering into a new agreement with the actual landlord in January, I had to make a second rent payment for the same period. This resulted in me paying double rent for the same duration, and I believe I was deceived into paying a full year's rent to Chris McLaughlan. 6. Addition of Glen Vorlich Limited as Joint Respondent: I do not wish to add Glen Vorlich Limited as a joint respondent. My landlord has also filed a lawsuit against Chris McLaughlan (case number FTS/HPC/CV/22/4106). I do not wish to include Glen Vorlich Limited as a joint respondent as Chris McLaughlan falsely claimed to be an employee of the company, but, in reality, he is not affiliated with the company.
5. The Applicant provided an amended application form which has as the entry in part 5 "Now he is required to return all the rent".
6. All case documents are referred to for their terms and held to be incorporated herein.

DECISION

7. 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."

8. 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.

REASONS FOR DECISION

9. The jurisdiction of the Tribunal in civil matters arising out of a Private Residential Tenancy in terms of the 2016 Act is set out in s 71 of the Act as follows: First-tier Tribunal's jurisdiction (1) In relation to civil proceedings arising from a private residential tenancy— (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b), (b) a sheriff does not have competence or jurisdiction. (2) For the purposes of subsection (1), civil proceedings are any proceedings other than— (a) the prosecution of a criminal offence, (b) any proceedings related to such a prosecution.

10. The 2016 defines Private Residential Tenancies in s 1 as follows: “ 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.”
11. In terms of the documents lodged and the information now provided it is clear that the person who had issued the tenancy agreement commencing on 11 October 2022 was not an employee of the landlord but was a tenant of the landlord unauthorised to let the property on behalf of the landlord stated on the tenancy agreement.
12. On the basis of the information provided the Tribunal finds that there was no Private Residential Tenancy over the property between the Respondent and the Applicant from which jurisdiction of the Tribunal can arise. The Applicant had been advised of this issue in the Tribunal's letters of 14.8.23 and 18.9.23. The property was not “let” to the Applicant by the Respondent as the Respondent was not in a position to enter into a valid contract on behalf of the landlord stated in the tenancy agreement. The description provided indicates that this may be a matter of fraudulent behavior on the part of the Respondent. The Applicant may be able to pursue the matter in the Sheriff Court under the general civil jurisdiction of the Sheriff Court. It cannot be raised in the Housing and Property Chamber as it does not arise out of a validly constituted Private Residential Tenancy as would be required in terms of S 71 of the Private Housing (Tenancies) (Scotland) Act 2016.
13. The Tribunal does not have jurisdiction over this dispute and thus it would not be appropriate to accept the application.

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 McFatridge
Legal Member
1 December 2023