



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR 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")**

**Case Reference: FTS/HPC/CV/23/2608**

**Flat 4, Floor 1, Block B, The Bridgehouse, 123 Fountainbridge, Edinburgh  
Edinburgh ("the property")**

**Timothy Cowling, Room 4, 2 West Adam Street, Edinburgh ("the Applicant")**

**Unite Students, South Quay House, Templeback, Redcliff, Bristol ("the Respondent")**

1. The Applicant seeks a payment order in relation to a refund of rent in terms of Rule 111 of the Procedural Rules and Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant submitted a list of terms and conditions of tenancy with the application.
2. In response to a request for further information, the Applicant provided a booking form, which confirmed the length of time the Applicant would stay in the property and the schedule of payments. The form confirmed that the occupation of the property was for the academic year. The Tribunal issued a further letter, asking the Applicant to explain why the Tribunal had jurisdiction to consider the matter. The Applicant failed to respond to this or a reminder that was sent.

**DECISION**

3. The Legal Member 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."

4. After consideration of the application, the attachments and correspondence from the Applicant, the Legal Member determined that the application should be rejected on the basis that there is good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c).

## **REASONS FOR DECISION**

5. The Tribunal has jurisdiction to deal with civil matters arising out of the 2016 Act in terms of section 71. This states "(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."
6. Section 71 relates only to private residential tenancies under the 2016 Act. Section 1 provides a definition of "private residential tenancy" for the purposes of the Act. This states "(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." In terms of Paragraphs 5 of Schedule 1 (Student Let), a tenancy cannot be a private residential tenancy if "(a) the purpose of it is to confer on the tenant the right to occupy the let property while the tenant is a student" and the Landlord is wither a University, College or an institutional provider of student accommodation.
7. The documentation submitted with the application suggests that the Respondent is an institutional provider of student accommodation and that the

tenancy conferred on the Applicant the right to occupy the property as a student. The Applicant was asked to clarify this in order to establish if the Tribunal has jurisdiction. However, the Applicant failed to respond to two requests for information in this regard.

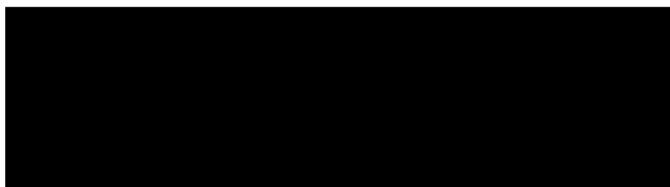
8. As the Tribunal does not appear to have jurisdiction to deal with the application in terms of Section 71 of the 2016 Act, and as the Applicant failed to respond to two requests for further information issued in terms of Rule 5 of the Procedure Rules, the Legal Member determines that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

### **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.**



**Legal Member  
20 December 2023**