



Decision with Statement of Reasons of Alan Strain, 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/PR/23/4206

Re: 64 Newington Road, Edinburgh, EH9 1QN ("the Property")

Parties

Mr Lukasz Laszczyk (Applicant)

Mr Xing Bin Li c/o The Property Letting Centre (Respondent)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 110 on 23 November 2023. The application sought a wrongful termination order under the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**.

2. The application was considered by the Tribunal and further information was requested by letter of 20 December 2023. The Applicant was asked to provide the following further information:

*"Before a decision can be made, we need you to provide us with the following:
1. Please provide a copy of the tenancy agreement for the property and confirm the address. You have indicated that the address is the same as the*

respondent's address but this appears to be incorrect. 2. Rule 110 and Sections 57 and 58 of the 2016 Act only apply to private residential tenancies which started after 1 December 2017. If your tenancy started before this date you require to make an application under the 1988 Act for unlawful eviction in terms of Rule 69. Information is available on the Tribunal website about this process. 3. If the application is to proceed you must provide an address for the Respondent. A c/o address cannot be used. You may wish to take legal advice before you respond. Please reply to this office with the necessary information by 3 January 2024. If we do not hear from you within this time, the President may decide to reject the application. "

3. The Applicant did not respond. The tribunal wrote again on responded by email of 31 January 2024 in the following terms:

"A Legal Member of the Tribunal with delegated powers of the President has considered your application and notes that you have failed to provide a response to a previous request for information. A further copy of this is attached. You may wish to take legal advice before you respond. Please respond within 14 days or your application may be rejected. Please reply to this office with the necessary information by 14 February 2024. If we do not hear from you within this time, the President may decide to reject the application."

No response was received.

Reasons for Decision

4. 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."

5. '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".*

6. Rule 110 provides:

Application for a wrongful termination order

110. Where a former tenant makes an application under section 57(2) (wrongful termination by eviction order) or section 58(2) (wrongful termination without eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name and address of the former tenant;

(ii)the name, address and profession of any representative of the former tenant; and

(iii)the name, address and registration number (if any) of the former landlord;

(b)be accompanied by evidence showing that the tenancy was unlawfully terminated; and

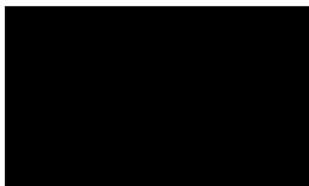
(c)be signed and dated by the former tenant or a representative of the former tenant.

The Applicant has failed to provide the information required to allow the application to proceed. In particular, he has not provided the tenancy agreement or an address for the Respondent.

7. The Tribunal consider that the Applicant's failure to provide the requested information constitutes 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.



12 March 2024

Legal Member/Chair

Date