



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/CV/24/0630

Re: 35 Elm Park, Hill of Beath, COWDENBEATH, KY4 8BF ("the Property")

Parties

Mr Elijah Tangi (Applicant)

Mr James Wemyss (Respondent)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be rejected on the basis that the application is frivolous in terms of Rule 8(1)(a) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 111 on 8 February 2024.
2. The application was considered by the Tribunal on 7 March 2024. The Tribunal wrote to the Applicant in the following terms:

"Before a decision can be made, we need you to provide us with the following:

There is reference to this being shared accommodation, and you have stated that the Respondent's address is the same address at which you resided. Please confirm whether your landlord resided at the property as a resident landlord when you resided there. In order for an application to be accepted, the tenancy must be a private residential tenancy ("a PRT"). If it was not a PRT, the Tribunal will not have

jurisdiction to consider the case, and you would be advised to withdraw the application and take advice on your options for recovery of the tenancy deposit.”

It does not appear that the Tribunal has jurisdiction to deal with this matter. This is because the tenancy does not appear to be a private residential tenancy. A tenancy can only be a PRT if it is let to an individual who occupies the property as their only or principal home. The tenant/Respondent in this case appears to be a company and not the occupier. It therefore appears to be a commercial lease. Please clarify why the Tribunal can consider the matter and why the court proceedings are not ongoing.”

The Applicant responded by email of 14 March 2024:

“Thanks for the update as pertaining the status of the application. In response to the update, the said accommodation is owned by the landlord and part of the accommodation is used for rent. To this end, I would like to take your advice on the option of recovery for the paid deposit which the landlord is yet to make any refund. Please I need your advice going forward.”

The Tribunal wrote again on 12 April 2024:

“Before a decision can be made, we need you to provide us with the following:

The Tribunal sought further information by email dated 7 March 2024 and explained that if you shared the accommodation with your landlord the tenancy would not be a private residential tenancy and the Tribunal would not have jurisdiction. The Tribunal suggested that the application be withdrawn if the accommodation was shared with your landlord. You have responded by email dated 14 March 2024 in which you state that the accommodation is owned by the landlord and part of the accommodation is used for rent. You then ask for advice regarding your options to recover your deposit. Please clarify if you shared the accommodation with your landlord. If that is the case please confirm that you wish to withdraw the application. The Tribunal is an impartial body and is therefore unable to provide advice. The names of bodies who are able to provide advice are shown on “useful links” area of the Tribunal website.”

The Applicant responded on 12 April 2024:

“Like I said earlier, the accommodation is owned by the landlord which is a 3 bedroom apartment, also the accommodation was advertised on spare room platform, the landlord gave out one part of the accommodation for rent and he occupied the other part with his partner. So it means the accommodation is private residential property. So this is the true nature of the property.”

Reasons for Decision

3. 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."

4. The application seeks to proceed under Rule 111 in respect of a private residential tenancy. The Respondent and Landlord reside in the Property. A private residential tenancy is defined in the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)** as:

1. 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.

Schedule 1 of the Act provides:

Resident landlord

7. A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8. This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and

(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—

(i) has the interest of the landlord under the tenancy, and

(ii) has a right to use the shared accommodation in the course of occupying that person's home.

The tenancy cannot constitute a private residential tenancy and the Tribunal does not have jurisdiction.

5. The Tribunal considers that the application is frivolous and has no prospect of success. 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.

Alan Strain

8 May 2024

Legal Member/Chair

Date