

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/24/1834

Parties

Zahed Mohammed (Applicant)
McGoogans (Coatbridge) Limited (Applicant’s representative)
Liweo Group Limited (Respondent)

Flat 2, 2 London Road, Edinburgh, EH7 5AP (House)

1. By application received on 22 May 2024 the Applicant sought an eviction order against the Respondent in relation to a private residential tenancy between the parties. The application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 21 May 2024 the Tribunal wrote to the Applicant in the following terms:-

“The in-house convener has reviewed the application. Please reply to the following within 14 days. If we do not hear from you in that time the application will be rejected:

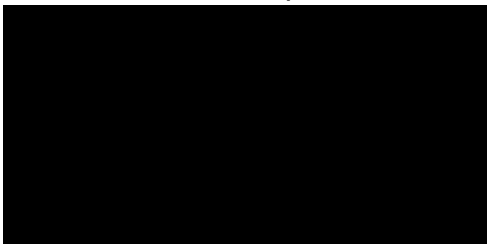
 1. *It does not appear that a private residential tenancy has been constituted as the respondent in the application is not an individual. Please confirm you wish to withdraw the application.*
 2. *If you consider the property is let to an individual, please amend the application to give the name and provide the following:*
 - (1) *Copy tenancy agreement*
 - (2) *Notice to leave and proof of service*
 - (3) *Amend the application to give the eviction ground and further details at part 5.*
 - (4) *Section 11 notice and proof of service.*
 - (5) *Your client’s right title and interest to make the application given he is neither the owner nor registered landlord.”*
3. By email dated 21 May 2024 the Applicant’s representative responded as follows:-

“You have been replied to immediately upon any communication from yourselves. All of this information has already been sent to yourselves.”

4. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “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”.
5. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form and in the absence of any further information from the Applicant.
6. Section 1(a) of the Private Housing (Tenancies) (Scotland) Act 2016 states that a private residential tenancy is defined as “*one under which a property is let to an individual*”. In this case the tenant is stated to be a limited company. The Applicant has brought an application under rule 109 for an eviction order in respect of a private residential tenancy. The Tribunal has concluded that the tenancy between the parties cannot be a private residential tenancy as the property has not been let to an individual. The Applicant has also failed to confirm the basis upon which he has title and interest to raise the application. Accordingly the application must be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Ruth O’Hare, Legal Member
7 June 2024