



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/24/1876

Parties

Chi Group Ltd (Applicant)

McGoogans (Coatbridge) Limited (Applicant’s representative)

Liweo Group Limited (Respondent)

61 Milnbank Street, Glasgow, G31 3AH (the Property)

1. By application received on 23 April 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 17 May 2024 the Tribunal wrote to the Applicant’s representative in the following terms:-

“Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member’s initial view is that the Tribunal does not have jurisdiction. The definition of a private residential tenancy is set out below. The tenant in this case is not an individual but a limited company. If you consider that the Tribunal does have jurisdiction, please provide your reason for taking this view and your application will be given further consideration. Please reply by 31 May 2024 or your application might be rejected.”

The Tribunal provided the Applicant’s representative with excerpt wording from the relevant sections of the Private Housing (Tenancies) (Scotland) Act 2016.

3. By email dated 21 May 2024 the Applicant’s representative responded as follows:-

“I would ask if this could be looked at please.”

4. The Tribunal responded to the Applicant’s representative by email on 11 June 2024 in the following terms:-

“The Tribunal does not have jurisdiction to deal with commercial leases. It can only deal with residential tenancies where the tenant is a natural person. The Respondent named in the application is a limited company. Please explain the basis upon which the Tribunal can entertain the application.”

5. The Tribunal received a further email from the Applicant’s representative on 17th June 2024 which stated *“I am looking for guidance and abd (sic) support given the arrears”*.
6. The Tribunal emailed the Applicant’s representative again on 22 July 2024 in the following terms:-

“We refer to our email of 11 June 2024 and note your response by email on 17 June 2024. It is not clear from your email if you are looking for guidance from the Tribunal or elsewhere. The Tribunal is an independent judicial body and cannot provide any advice. If you have not already done so, you may wish to consult a solicitor or housing advisory service.

Please respond within 14 days. Upon receipt of the above information, a decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application.”

No further response was received from the Applicant’s representative.

7. 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”.
8. 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.
9. 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 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. 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.

R. O'Hare

Ruth O'Hare, Legal Member
28 August 2024