

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/TE/24/3484

Parties

Kevin Martinese (Applicant)

Debra Stout (Applicant’s Representative)

Kamuran Kozan (Respondent)

85 Ferniehill Road, Edinburgh, EH17 7BN (House)

1. By application received by the Tribunal on 1 August 2024 the Applicant sought an order against the Respondent under Rule 105 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). The application sought an order under section 14(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) to draw up the terms of the tenancy, where the written terms had not been provided.
2. Following receipt of the application the Tribunal wrote to the Applicant’s representative by email dated 20 August 2024 requesting further information. In particular the Tribunal sought clarification as to whether the Applicant was still residing in the property, noting that an application under Rule 105 could only be made by the current tenant. The Tribunal also sought evidence showing how and when the notice was sent or given to the landlord.
3. On 28 August 2024 the Applicant’s representative responded to the Tribunal’s request for information. She advised that the Applicant should have been residing in the property up to the 15th September, however due to the situation with the Respondent he was advised to move out of the property. The Applicant had therefore secured an earlier entry date to his new home of 16th August 2024. The Applicant’s representative provided a copy of the notice to leave that the Applicant had given to the Respondent together with an email from the Applicant’s representative to a solicitor.
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 and has no reasonable prospect of success. Section 14 of the 2016 Act states: _

“(1)The tenant under a private residential tenancy may (subject to subsection (3)) apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the landlord—

(a)has a duty under section 10 to provide the tenant with a document which sets out all of the terms of the tenancy, and

(b)the landlord has not provided that document to the tenant.

(2)Either the tenant or the landlord under a private residential tenancy may apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the tenant or landlord thinks that the written terms of the tenancy purport to displace a statutory term in an unlawful manner.

(3)The tenant may not make an application under subsection (1) unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.

(4)For the purpose of subsection (2), written terms of a tenancy purport to displace a statutory term in an unlawful manner if—

(a)the statutory term is not included in the written terms of the tenancy but is a term of the tenancy because regulations under section 7(3)(a) do not provide otherwise, or

(b)the statutory term, as expressed in the written terms of the tenancy, bears to be subject to a modification which is not permitted by regulations under section 7(3)(b).

(5)In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.

(6)In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this section are to any one of those persons.”

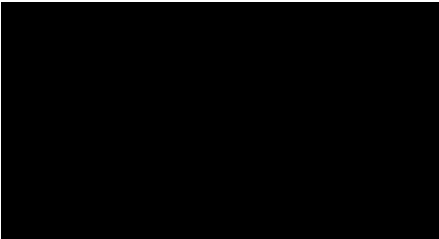
6. The Applicant’s representative has confirmed that the Applicant is no longer residing in the property. He has secured accommodation elsewhere. Accordingly there is no longer a private residential tenancy between the parties,

and on that basis the Applicant cannot satisfy section 14(1). The application cannot therefore be entertained as it does not comply with section 14(1) of the 2016 Act and therefore must be rejected.

7. I do have sympathy with the Applicant's position and he may wish to seek advice regarding alternative remedies that may be available to him in view of the circumstances he has outlined regarding the tenancy between the parties. However the application cannot succeed under Rule 105.

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
23 September 2024