

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision Under Rule 8(1)(a) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)**

Case reference FTS/HPC/PR/24/4419

**Parties**

**Chisom Ezeh (Applicant)**

**Janith Arachchige, Keith Vaz (Respondent)**

**5 Sheerwood View, Bonnyrigg, EH19 3NQ (House)**

1. By application received by the Tribunal on 23 September 2024 the Applicant sought an order against the Respondent under Rule 110 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Rule 110 permits a tenant to make an application to the Tribunal for a wrongful termination order under Section 57(2) or 58(2) of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”).
2. On 4 October 2024 the Tribunal wrote to the Applicant requesting further information regarding her application. As part of that request the Tribunal asked the Applicant to confirm if the Respondents resided in the property with her. The Tribunal also noted that the application also referred to Rule 103, and requested the Applicant provide an application for each rule, as she could not submit one application under multiple rules.
3. On 4 October 2024 the Applicant provided an amended application under Rule 110 of the Rules. On 9 October 2024 she provided a copy of a document titled “Lodger Agreement”. The parties were noted as the Applicant and Respondents and entitled the Applicant to occupy a room in the property with access to shared areas in common with the Landlord.
4. On 11 October 2024 the Tribunal wrote again to the Applicant requesting further information. As part of that request the Tribunal noted that the First Respondent’s address was the same as the tenancy address. The Tribunal asked the Applicant to confirm if that was the case.
5. The Applicant responded on 13 October 2024 confirming that she had lived at the tenancy address with the First Respondent throughout the tenancy who was the son of the Second Respondent. The Second Respondent lived elsewhere.
6. 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”.

7. An application under Rule 110 can only be made under section 57(2) or 58(2) of the 2016 Act. Section 57(2) applies to wrongful termination of a private residential tenancy by an eviction order, and section 58(2) applies to wrongful termination of a private residential tenancy without an eviction order.
8. The definition of a private residential tenancy is contained within section 1 of the 2016 Act. Section 1 states that a private residential tenancy cannot be any of the tenancies listed in Schedule 1 of the 2016 Act.
9. Paragraph 7 of Schedule 1 is titled “*Resident landlord*” and states that a tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it. Paragraph 8 states:-

*“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.”*

10. In this case the Applicant has confirmed that she shared the property with the First Respondent, who is noted on the Lodger Agreement as the joint landlord. The Lodger Agreement confirms that the Applicant was entitled to a room in the property, with access to shared areas in common with the Landlord. I am therefore satisfied that there is sufficient information before the Tribunal to conclude that the tenancy meets the criteria outlined in paragraph 8 of Schedule 1 of the 2016 Act. The tenancy between the parties is not a private residential tenancy. The application cannot therefore succeed under either section 57(2) or 58(2) of the 2016 Act and 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**  
**17 October 2024**