



**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/24/4627

**Parties**

**Chisom Ezeh (Applicant)**  
**Janith Arachchige, Keith Vaz (Respondent)**

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

1. The Applicant made a previous application to the Tribunal on 23 September 2024 for an order against the Respondent under Rule 103 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”). In summary the Applicant stated that her deposit had not been lodged with a scheme by the Respondents and she was therefore seeking a payment order by way of sanction against them. The Applicant also stated in the application that she was proceeding under Rule 110 and was seeking a wrongful termination order against the Respondents.
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 as that may have a bearing on their obligations under the Tenancy Deposit Scheme (Scotland) Regulations 2011. The Tribunal also noted that the application also referred to Rule 110, 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 submitted this application under Rule 103. On 9 October 2024 the Applicant provided a copy of a document titled “Lodger Agreement”. The parties were noted as the Applicant and Respondents.
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, as different rules would apply to resident landlords. The Tribunal also noted that the Applicant had submitted two identical applications under Rule 103 and asked the Applicant to confirm that the previous application under reference FTS/HPC/PR/24/4418 could be withdrawn.

5. The Applicant responded by email on 12 October 2024 advising that she wished the previous application under reference FTS/HPC/PR/24/4418 to continue. The Applicant sent a further email on 13 October 2024 confirming that she had lived at the tenancy address with the First Respondent 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. A tenant may apply to the Tribunal under Rule 103 and Regulation 9 of the 2011 Regulations where the landlord has breached the duties in relation to tenancy deposits under Regulation 3. Regulation 3(1) of the Tenancy Deposit Scheme (Scotland) Regulations 2011 states that those duties, including the duty to pay the deposit to an approved scheme, apply to "*a landlord who has received a tenancy deposit in connection with a relevant tenancy*".
8. Regulation 3(3) provides that a relevant tenancy for the purpose of Regulation 3(1) is any tenancy or occupancy arrangement in respect of which the landlord is a relevant person and by virtue of which a house is occupied by an unconnected person, unless the use of the house is of a type described in Section 83(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act"). Regulation 3(4) states that relevant person has the meaning conferred by Section 83(8) of the 2004 Act, which provides that a relevant person is not a local authority, registered social landlord or Scottish Homes.
9. Section 83(6)(e) of the 2004 Act states that the use of the house as a dwelling should be disregarded if the house is the only or main residence of the relevant person. The Applicant has confirmed that she was residing with the First Respondent at the property. This is supported by the Lodger Agreement she has provided which confirms that she was renting a room in the property, with the right to use shared areas in common with the landlord. Whilst the Second Respondent did reside elsewhere, the house was the only or main residence of the First Respondent who is a relevant person. Accordingly I can conclude that the tenancy between the parties was not a relevant tenancy for the purposes of Regulation 3(1) of the 2011 Regulations. The application is therefore cannot succeed 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**