

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/CV/24/4034

39 Kilburn Wood Drive, Roslin, EH25 9AA ("the Property")

Parties:

Magdalena Wood (Applicant)
David Grech (Respondent)

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the applicant received by it on 30 August 2024 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

Background

- 1 On 30 August 2024 the Applicant submitted an application under Rule 111 of the Rules. The Applicant sought a payment order against the Respondent for £600, being unpaid rent.
- 2 On 25 September 2024 the Tribunal wrote to the Applicant querying the jurisdiction of the Tribunal regarding the application. The Tribunal noted that the agreement in place between the parties appeared to be excluded from being a private residential tenancy under paragraph 7 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), and that applications under Rule 111 were restricted to claims arising from private residential tenancies. It therefore appeared that the claim should instead be directed to the Sheriff Court. The Tribunal asked the Applicant whether she accepted the position, and if she wished to withdraw her application.
- 3 On 8 October 2024 the Tribunal received an email from the Applicant advising that her claim had been rejected by the Sheriff Court, hence the application to the Tribunal. She confirmed that she was a landlord with interest in the house, with the exception of the room rented to the lodger and she believed that a private

residential tenancy was in place in respect of that party of the property. She did not wish to withdraw the application but understood it was the Tribunal's decision.

Reasons

- 4 The Legal Member considered the application in terms of the Rules and determined that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to establish the relevant rule upon which the Tribunal has jurisdiction to consider the application.
- 5 The Applicant has submitted an agreement titled "Lodger Agreement" between the parties. The agreement confirms that the Respondent was entitled to rent a room in the property, with the Applicant described in the agreement as the "Live-in Landlord". I can therefore conclude that the Applicant was a resident landlord, in that she was residing in the property during the term of the Respondent's occupation.
- 6 In terms of paragraph 7 of schedule 1 of the 2016 Act a tenancy cannot be a private residential tenancy where the landlord is a resident landlord. The Applicant has brought the application under Rule 111. Rule 111 is founded upon section 71 of the 2016 Act and applies to civil proceedings arising from private residential tenancies. On the basis that the tenancy between the parties is not a private residential tenancy the Applicant cannot rely upon that rule.
- 7 The Applicant has not identified any other relevant rule under which the application can proceed, and there is no other rule I can find that would give the Tribunal the power to consider the application. On that basis I have concluded that the application should be rejected under Rule 8(1)(c) as it would not be appropriate to accept the application.

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: A party 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
8 November 2024