



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.**

In respect of application by Mr Shashank Yadav in terms of rule 103 of the Rules.

Respondent: Ms Joanna Angowshi

**Case reference FTS/HPC/PR/24/4532**

At Glasgow on the 14 October 2024, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) of the Rules

1. This is an application by Mr Shashank Yadav in connection with a tenancy deposit in terms of rule 103 of the Rules and regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (‘the regulations’). The application was dated 16 September 2024 and received by the Tribunal on 2 October 2024.
2. The application was accompanied by a copy of the applicant’s tenancy agreement which stated at clause 2:

*The Tenant acknowledges that this tenancy is not a Scottish Private Residential Tenancy by reason of being a tenancy granted by a resident landlord.*

3. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 4 October 2024 seeking further information as follows:

It appears from the terms of your application, and the tenancy agreement provided, that your landlord was living in the property with you. The duty to lodge tenancy deposits does not apply to landlords who reside in the property with their tenants, otherwise known as resident landlords. You cannot therefore apply under rule 103 if your landlord was a resident landlord. Can you please explain why you believe your application can proceed. Alternatively please confirm in writing if you wish to withdraw your application.

4. The applicant responded on 9 October 2024 stating:

*Although it appears that the person living with me was the landlord, I have some reasons to believe that the house belongs to her husband and not to her as I paid her husband my rent. Can your department check who the house belongs to?*

5. Regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 provides:

### **Duties in relation to tenancy deposits**

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

(a) pay the deposit to the scheme administrator of an approved scheme; and

(b) provide the tenant with the information required under regulation 42.

**[F1**(1A) Paragraph (1) does not apply—

(a) where the tenancy comes to an end by virtue of section 48 or 50 of the Private Housing (Tenancies) (Scotland) Act 2016, and

(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.]

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

**[F2**(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—

(a) the references to deposit were to each instalment of the deposit, and

(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.]

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

(a) in respect of which the landlord is a relevant person; and

(b) 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) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

6. In terms of regulation 3(3) a landlord has an obligation to lodge a tenancy deposit in an approved scheme where there is a relevant tenancy, the landlord is a relevant person and the house is occupied by an unconnected person. The definition of "unconnected person" is found in Section 83(8) of the Antisocial Behaviour etc. (Scotland) Act 2004 which provides:

In this Part—

- "relevant person" means a person who is not—
  - (a) a local authority;
  - (b) a registered social landlord; or
  - (c) Scottish Homes; and
- "unconnected person", in relation to a relevant person, means a person who is not a member of the family of the relevant person.

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*'.
7. "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. As the house is occupied by the landlord as well as the applicant, the terms of regulation 3(3) are not fulfilled. The landlord is not an "unconnected person" and the obligation to lodge the deposit does not apply.

**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.

Lesley Ward

Lesley Anne Ward

Legal Member