

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/24/4992

5 Sheerwood View, Bonnyrigg, EH19 3NQ ("the Property")

Parties:

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

Tribunal Member: Ruth O'Hare (Legal Member) with delegated powers from the Chamber President.

Decision

The Tribunal rejects the application by the Applicant received by it on 31 October 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 October 2024 the Applicant submitted an application under Rule 111 of the Rules. The Applicant sought the return of the remainder of her tenancy deposit from the Respondents.
- 2 The application was a duplicate of a previous application submitted by the Applicant on 13 October 2024 under reference FTS/HPC/CV/24/4767. On 21 October 2024 the Tribunal had written to the Applicant regarding that application noting that a separate application she had submitted under Rule 103 of the Rules had been rejected on the basis that the tenancy between the parties was held to not be a private residential tenancy, as one of the landlords was residing at the Property during the tenancy term. As rule 111 applied to claims arising from private residential tenancies, the Tribunal did not believe the application could proceed under that rule and asked the Applicant to explain under which rule the Tribunal had jurisdiction to consider the application. The Applicant was encouraged to seek legal advice, and to provide a response by 4 November 2024 failing which her application may be rejected by the Chamber President.

- 3 On 30 October 2024 the Applicant wrote to the Tribunal requesting an update regarding application FTS/HPC/CV/24/4767. The Applicant also sent a second email later that day with the present application which was a duplicate of FTS/HPC/CV/24/4767. The Tribunal responded by email directing the Applicant to the Tribunal's request for information dated 21st October 2024. The Applicant was asked to provide a response by the date stated therein.
- 4 On 26 November 2024 the Tribunal wrote again to the Applicant asking her to explain under which rule the Tribunal had jurisdiction to consider the application. The Tribunal noted that both applications appeared to be in respect of a lodger agreement over which the Tribunal had no jurisdiction.
- 5 No further response was received from the Applicant.

Reasons for decision

- 6 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 and has failed to provide any further response to the Tribunal's request for information made under Rule 5 of the Rules.
- 7 An application under rule 111 of the Rules can only be made where the tenancy in place between the parties is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). In terms of paragraphs 7 and 8 of schedule 1 of the 2016 Act a tenancy cannot be a private residential tenancy where a landlord is a resident landlord. Paragraph 8 in particular provides that a tenancy cannot be a private residential 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.”

- 8 The Applicant has confirmed in correspondence with the Tribunal that she had lived with the first Respondent at the property during the term of the tenancy, and has provided a document titled Lodger Agreement which confirms that she was renting a room in the property, with the right to use shared areas in common with

the landlord. I am therefore satisfied that there is sufficient information before the Tribunal to establish 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 and the Applicant cannot therefore rely upon rule 111.

- 9 The Applicant has not identified any other relevant rule under which the application can proceed, and there is no other rule I can identify that gives the Tribunal jurisdiction 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

Ruth O'Hare, Legal Member
14 January 2025