



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/24/4323

190 Piper Drive, Glenrothes, KY7 6TG (House)

Parties:

Shashank Yadav (Applicant)

Bruno Terlecki (Respondent)

Tribunal Member: Ruth O'Hare (Legal Member)

Decision

The Tribunal rejects the application by the Applicant received by it on 17 September 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 17 September 2024 the Applicant submitted an application under Rule 111 of the Rules in which he sought a payment order against the Respondent for the return of his deposit in the sum of £300 plus interest. The Applicant also sought repayment of a utility bill in the sum of £20.
- 2 On 15 October 2024 the Tribunal wrote to the Applicant requesting a copy of the tenancy agreement between the parties. The Tribunal also requested confirmation as to whether the Respondent resided at the tenancy address with the Applicant during the term of the tenancy.
- 3 On 18 October 2024 the Applicant responded to advise that the Respondent had sublet him a room in the property. The Respondent was not the owner nor the landlord. The Respondent had not provided the Applicant with a tenancy agreement. The Applicant confirmed that the Respondent had resided with him in the property.
- 4 On 3 December 2024 the Tribunal wrote again to the Applicant advising that it would require to be satisfied that there was a private residential tenancy in place between the parties for the application to proceed under rule 111. The Tribunal

noted that the Applicant did not consider the Respondent to be the landlord, and that the Respondent had resided in the property. The Tribunal explained that a tenancy could not be a private residential tenancy if the landlord resided at the tenancy address. The Applicant was advised to either withdraw his application or provide submissions in connection with its validity. The Applicant was encouraged to take legal advice.

- 5 On 4 December 2024 the Applicant responded to the Tribunal by email. He clarified that the Respondent was not the owner of the property but the Applicant had subletted from him therefore he was the Applicant's landlord. The Applicant stated again that the Respondent had resided at the property. He was the only person the Applicant had communicated with regarding the tenancy. The Applicant had asked for a written tenancy agreement but the Respondent had not provided this. The Applicant referred to screenshots of text messages that he had produced with the application in which the Respondent refused to return his deposit. He believed the Respondent was breaking the law and he did not want to withdraw the application.

Reasons

- 6 Having considered the application in terms of the Rules I have 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.
- 7 The Applicant has confirmed that the Respondent resided at the property during the term of the tenancy. I can therefore conclude that the Respondent was a resident landlord, in that he was living at the property during the period of the Applicant's occupation.
- 8 In terms of paragraph 7 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act ("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.
- 9 The Applicant has not identified any other relevant rule under which the application can proceed, and there is no other rule or statutory provision I can find that would give the Tribunal authority to entertain the application. I must therefore conclude that the Tribunal does not have jurisdiction to consider this matter and on that basis it would not be appropriate to accept the application. The application is therefore rejected under Rule 8(1)(c).

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 of the decision. Information about the appeal procedure can be found on the Upper Tribunal website.



r