



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 Miss Ummugulsum Demir in terms of rule 69 of the Rules.

Adil Mahmood Respondent

Case reference FTS/HPC/PR/24/2129

At Glasgow on the 6 January 2025, 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) and (c) of the Rules

1. This is an application by Miss Ummugulsum Demir seeking damages for unlawful eviction in terms of rule 69 of the Rules. The Application was dated 9 May 2024.
2. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 24 May 2024 seeking further information as follows:

Your application has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters

The tenancy documents which you have provided shows that Adil Mahmood is the property manager. The title deeds obtained by the tribunal and information contained on the landlord registration website show that the owner of the property is Rabee Harb. Can you please advise why you believe Adil Mahmood is the landlord and owner of this property

Can you please advise when you moved into the property and the date you moved out? Did you occupy the entire flat or just a single room within it?

In your application you indicate that you are looking to be compensated for unlawful eviction and harassment and you indicate that you believe the tribunal can make an order that your landlord pays you between three months' rent and 36 months' rent. That calculation of the measure of damages for unlawful eviction was a temporary measure introduced by temporary legislation which ended on 31 March 2024. The measure of damages is set out in section 347 of the Housing Scotland 1988 in the following terms

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The measure of damages.

(1)The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—

(a)the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and

(b)the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.

(2)For the purposes of the valuations referred to in subsection (1) above, it shall be assumed— (a)that the landlord is selling his interest in the premises on the open market to a willing buyer; (b)that neither the residential occupier nor any member of his family wishes to buy; and (c)that it is unlawful to carry out any substantial development of any of the land in which the landlord's interest subsists or to demolish the whole or part of any building on that land.

.....

Can you please advise the level of award you are seeking from the tribunal? You may require to obtain the services of the surveyor to obtain appropriate Valuations Further queries may arise upon receipt of your response and examination of any further documents Please respond to this letter within the next two weeks . Upon receipt of the above information, a final decision can then be taken on whether the applications are valid and whether they should be accepted and referred to the tribunal for full determination. The tribunal would respectfully suggest that you may wish to seek independent legal advice on this matter.

3. The applicant responded on 10 June 2024 as follows:

I believed that Adil Mahmood was the landlord as he assured me that he had dozens of properties and that was how he managed them.

Also, there were already two people (both international students) in the flat as tenants, one staying in the flat for 6+ months and the other for 5+ months. They both took over the rooms they were renting from a previous friend/acquaintance who stayed in the flat as tenants for 2+ years. I was also told that he managed his properties through a foundation and when I researched the bank details I was given, it showed that the bank details indeed belonged to a foundation in Adil Mahmood's name. He also mentioned multiple times that he was trying to help minorities as he was one, which was why he only rented the rooms to international students or people with minority backgrounds.

So after being assured by Mr. Mahmood and the existing tenants I believed that, the renting process would be different if the flat/room was rented through a foundation/private company.

I moved into the property on 05/01/2024 and moved out on 30/04/2024. I have occupied a single room in a flat shared by two other people. Unfortunately, due to the short Notice to Leave, I had to move to the first property I found and got accepted, it was so far out of my budget but I didn't have any choices. I have used all

of my savings to afford the deposit and the rent. So, I am unable to afford a surveyor or legal help. I am seeking an award of £1650 (all the rent I have paid to the flat - 3 months) and £1950 (3 months of my current rent), a total of £3600. I am grateful for the Tribunal's advice to get legal assistance, but unfortunately, I cannot afford it. My apologies for any mistake I might have made throughout my application.

4. The Tribunal sent a further request for information on 4 July 2024 as follows:

- (1) If you are making the application under rule 69 and in terms of S 36 of the Housing (Scotland) Act 1988 then the amount of damages are defined in S 37 of the 1988 Act and these have to be evidenced and calculated in accordance with that provision. You will need to evidence the value of the house without tenants as against the value of the house with tenants. That is the type of damages you can claim under that rule. If you don't wish to do that then you must raise the claim under a different legal basis. The Tribunal is not allowed to provide legal advice to parties and this is a complicated legal issue - you can access advice from some free advice bodies, look at the "Useful Links" button on the Tribunal's Website, even if you cannot afford a solicitor. Unless you can address the calculation of the damages as set out in S 37 of the 1988 Act the Tribunal cannot do that for you.
- (2) An application under rule 69 can ONLY be made against a landlord. If you have a tenancy agreement that shows the Respondent as the landlord please provide this. If you have other records that show the Respondent as the landlord, please provide those. Otherwise you would have to amend the application to show the landlord of the property. The Tribunal cannot accept an application against an agent and the information provided so far explicitly states that the Respondent is acting as agent. As it is made at present the application would have to be rejected. Again, you may wish to seriously consider getting legal advice on the matter.

We have received two applications from you for the same Property and tenancy. These applications have been assessed by legal members with delegated authority of the Tribunal President and further information has been requested for both.

Application EV/23/4280 made on 29 November 2023. This application is made under Rule 65 – short assured tenancy being terminated in respect of tenancy breach, being Grounds 14 and 16. We pointed out and explained to you that there are flaws in the process you have followed and the Rule you have used which invalidate the tribunal's acceptance of the application. We asked you for further information and you did not respond.

Application EV/24/0498 made on 23 January 2024 This application is made under Section 23 of the Rent (Scotland) Act 1984 and Rule 79. You have used case 10 as your ground for the application. We wrote to you about this application, too, and pointed out and explained to you the flaws in the process you have followed and the Rule you have used which invalidate the tribunal's acceptance of this application. We asked you for further information and you did not respond.

In both of our letters, we suggested that you may wish to seek legal advice as matters relating to eviction can be complex. The tribunal cannot provide you with legal advice. We strongly advise that you take legal advice or

that you consider withdrawing the applications and recommencing the process using the correct procedure and Rules. Please reply to this and our earlier letters by 10 May 2024 or your applications may be rejected.

5. The applicant contacted the Tribunal on 17 July 2024 and indicated that she intended to instruct a solicitor. A reminder was sent on 13 August 2024. On 2 September 2024 the applicant sought an extension and on the 9 September 2024 the Tribunal granted a three week extension until 30 September 2024. A further extension was granted on 15 November 2024 for a further three week period.
6. The applicant made a substantive response to the further information request on 6 December 2024. The applicant failed to provide any evidence of damages as required by section 37 of the Housing (Scotland) Act 1988. The application also remains against the apparent agent to the property. In her email of 17 July 2024 the applicant made reference to the owner of the property but no application to amend the application has been received and Mr Mahmood remains as the respondent.
7. 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”***.
8. “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”.
9. I consider that this application is misconceived and has no reasonable prospect of success. An application can only succeed against the landlord and not his agent. Even if this application was made against the landlord, the applicant has failed to provide the correct supporting information as required by section 37 of the Housing (Scotland) Act 1988 and as set out in the Tribunal’s email of 4 July 2024.
10. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as the Tribunal have been in correspondence with the applicant regarding all outstanding matters since May 2024 and has failed to cooperate with the Tribunal in the execution of its duties.

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 Anne Ward

Legal Member