

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/24/5518

The Furze, Newburgh, Fife, KY14 6HH (House)

Parties:

**M & M Contracts Ltd (Applicant)
My Holiday Scotland (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 28 November 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 28 November 2024 the Applicant submitted an application to the Tribunal under Rule 111 of the Rules in which they sought a payment order against the Respondent for the return of their deposit.
- 2 On 4 December 2024 the Tribunal wrote to the Applicant following a review of the application by a Legal Member with delegated powers from the Chamber President. The Tribunal noted that the lease produced with the application purported to be an assured tenancy however no assured tenancies could competently be created following the introduction of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). Furthermore in terms of section 2 of the 2016 Act, the tenant must be an individual. The Tribunal asked the Applicant to clarify the type of tenancy that was the subject of the application. The Tribunal explained that if no private residential tenancy had been created then the Tribunal would not have jurisdiction in relation to any matters arising from the tenancy.
- 3 On 17 December 2024 the Tribunal received an email from Michael Poole, a director of the Applicant. He advised that the property was not rented as a holiday

let and had been rented for a period of time whilst the Applicant's employees were working in the area. Mr Poole confirmed that he was authorised to represent the Applicant in the matter.

- 4 On 8 January 2025 the Tribunal wrote again to Mr Poole, noting that he had not dealt fully with the issues raised in the previous request for information. The Tribunal asked Mr Poole again to confirm the basis upon which the Tribunal had jurisdiction to consider the application, and encouraged him to seek legal advice.
- 5 On 21 January 2025 the Tribunal received an email from Mr Poole with an amended application form. The email did not address the question of jurisdiction.

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 legal basis upon which the Tribunal has jurisdiction to consider the application.
- 7 The Applicant has submitted the application under Rule 111 of the Rules which applies to civil claims arising from private residential tenancies under the 2016 Act. In terms of section 1(a) of the 2016 Act, a tenancy is a private residential tenancy where "*the tenancy is one under which a property is let to an individual*". In this case the tenant, as per the terms of the tenancy agreement produced, is a limited company. I can therefore conclude that the tenancy between the parties is not a private residential tenancy as the tenant is not an individual.
- 8 The Applicant has been asked to explain the basis upon which the application can proceed. They have not identified any other relevant rule which would apply in this case, 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 accordingly 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 the decision was sent them. Information about the appeal procedure can be forwarded on request.

Ruth O'Hare, Legal Member
28 January 2025