



**Decision Under Rules 8 and 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)**

Case reference FTS/HPC/PR/24/3344

**Parties:**

**Courtney Garton, Joanna Murray (“the Applicant”)  
Frances Murray (the Applicant’s representative”)**

**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 22 July 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. The Applicant applied to the Tribunal under Rule 110 of the Rules and section 58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) seeking the maximum compensation of six months rent by way of a wrongful termination order. The Applicant provided the following documents in support of the application:-
  - (i) Private residential tenancy agreements dated 4 and 17 October 2022, and 30 November 2023;
  - (ii) Notice to leave dated 16 November 2023;
  - (iii) Copy email correspondence between the Applicant and Northwood Edinburgh; and
  - (iv) Screenshot of the property for let from 20 May 2024.
2. Following review of the application by a Legal Member of the Tribunal, the Tribunal wrote to the Applicant’s representative in the following terms:-

*“Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:*

- 1. The legal basis of your application is unclear. In order to claim wrongful termination without an eviction order, the tenant must have been misled into*

*ceasing to occupy the let property. In terms of section 58 of the Private Housing (Tenancies) (Scotland) Act 2016, the tenancy must have been brought to an end in accordance with section 50 of the Act, namely by the service of a notice to leave and the tenant leaving as a result. It is not clear that this is the case. You state that a further tenancy was created after service of the notice to leave, with an extended end date, but there is no end date with a private residential tenancy. It is not clear how the second tenancy came to an end. Was a further notice to leave served? You also state that you were informed before the tenancy ended that the landlord was no longer intending to sell. Please provide your representations as to how the application can be accepted in the circumstances. You are strongly advised to take legal or other suitable housing advice in this regard. If you require further time to do so, please let us know.*

*You should also be aware of the following:*

*2. It is not clear that the application has been made against the landlord, albeit the landlord is named as Northwood in the tenancy agreement. Landlord registration names the landlord as Andrew Mak. If the application is to proceed, you may wish to consider whether he is the correct Respondent, and provide us with an address.*

*Please reply to this office with the necessary information by 4 September 2024. If we do not hear from you within this time, the President may decide to reject the application.”*

3. On 2 September 2024 the Tribunal received the following response from the Applicant’s representative:-

*“I will try to answer the queries raised and offer an explanation in the order they were raised in your email.*

*1. The basis for the application is that the tenants were informed by Northwood on 16/11/23 that due to his financial circumstances the owner was selling the property and wanted to end their tenancy to allow the sale. The flat was rented to two 4th year university students who also had jobs in the area. Both girls parental homes are more than 80 miles away. Commuting was not an option. Trying to find another home right before Christmas while writing dissertations and preparing for final exams and assessments would be extremely difficult. In order not to add any more stress, on 17/11/2023 I offered a one-off payment of £600 if the owner would agree to postpone the sale and the girls would vacate as soon as they were able to. This was to be sometime in May 2024. Late November 2023 in a telephone conversation with Claire Bunce of Northwood I increased the offer to £1000. I have no written evidence of this however the difference in the amount of rent i.e. £1350 for the last 5 months where previously it was £1150 demonstrates this. In the same conversation I agreed that the latest date the girls would vacate the property would be 25/5/2024.*

*2. We did not seek a new tenancy this was done by Northwood to add the compensation payment I offered.*

3. A further notice to leave was not issued. The owner agreed to let the girls remain until May to complete their studies.

4. The girls moved out on 11/5/24. On 7/5/24 Northwood called and advised owner no longer selling and were they interested in staying at a higher rent. Northwood were well aware that end of tenancy clean had been arranged and girls were moving out.

5. In regard to the application being made against the landlord, we can only go with the information we have from the tenancy agreement, which as you say has Northwood named as the landlord. The only place where Andrew Mak's name appears was on the safe deposit Scotland paperwork. I have checked the landlord registration and there are no contact details for Andrew Mak. I am therefore unsure how to provide you with an address or contact details for this person or if he is the correct respondent.

*I hope the above demonstrates why we feel the girls were misled into moving out of the property."*

4. The Tribunal wrote again to the Applicant's representative on 9 October 2024 in the following terms:-

*"A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:*

*1. The landlord registration details on the tenancy agreement disclose that the property was registered under the landlord Mr Mak. Please provide the current address of the Respondent. Should you be unable to do so you can apply for Service by Advertisement, the relevant form can be found on the Tribunal's website. If you do submit an application for Service by Advertisement please submit this together with a negative trace report from either a tracing agent or Sheriff Officers. It is the responsibility of the Applicant to provide all necessary information for a valid application. The requirement in rule 110 is that the application is directed against the landlord and not against the letting agent.*

*2. Please make representations as to why the Notice to Leave to a previous tenancy would be considered as terminating an new tenancy. The statutory requirement of an application under rule 110 and s58 of the Private Housing (Tenancies) (Scotland) Act 2016 is that the tenancy came to an end in terms of S 50 of the Act.*

*You may wish to obtain legal advice on the matter."*

5. The Tribunal received a response from the Applicant's representative on 10 October 2024. She advised that she had contacted the letting agent to obtain the landlord's contact details. The agent had responded to confirm that they were the landlord as noted in the tenancy agreement. The Applicant's representative went on to provide contact details for the letting agent and an email from them confirming the position.

6. On 15 November 2024 the Tribunal wrote again to the Applicant's representative in the following terms:-

*"A Legal Member of the Tribunal with delegated powers of the President has considered your application.*

*1. As previously advised the application appears to be misconceived. The Notice to leave pre dates the current tenancy agreement. This means that a valid notice to leave had not been issued in relation to the current tenancy. Furthermore, it appears that the letting agent told you that the property was no longer going to be sold before you moved out of the property. Please clarify why you consider that you were misled given those circumstances and why you believe that the application can proceed.*

*2. If the application is to proceed it must be made against the correct person. The respondent is not the registered landlord and it appears that they are also not the owner. The application must be amended to name the correct respondent and an address is required.*

*You may wish to take legal advice before you respond.*

*Please reply to this office with the necessary information by 29 November 2024. If we do not hear from you within this time, the President may decide to reject the application."*

7. The Applicant's representative responded to the Tribunal on 15 November 2024 in the following terms:-

*"I attached a copy of an email where Northwood state they are the landlords. Please explain why when they state they are the landlords this is not acceptable. The owner is listed as Andrew Mak but there are no contact details listed on the register. Surely this is the fault of the administrators of the register.*

*As far as we are concerned there was no second tenancy. We offered a compensation payment for the landlord to postpone the sale. We were trying to be reasonable & fair. We feel we have been completely misled. The tenants did not change they did not move out. As far as we were concerned the new documents issued were only so they could have written proof of the extra £1000 compensation. Also as we were told the property had to be sold due to financial hardship we negotiated the earliest date the tenants could leave on completion of their studies. Again trying to be reasonable & fair. We feel now due to us being reasonable people we have been completely cheated.*

*Northwood did state 3 days before the girls moved out that the property was no longer being sold. The rent was to be increased greatly & the girls had by this time made alternative arrangements.*

*Please state clearly on what grounds you feel our application cannot proceed."*

8. On 19 December 2024 the Tribunal wrote again to the Applicant's representative in the following terms:-

*"A Legal Member of the Tribunal with delegated powers of the President has considered your response.*

*1. You have stated that you wish to proceed against the current Respondent because they have stated that they are the landlord. As previously advised the owner and registered landlord appears to be Andrew Mak. If the application is accepted with only the current Respondent it is likely that the application will fail because the Respondent is not the landlord. You have the option of adding Mr Mak as the second respondent but an address is required. The letting agent is required to provide this in terms of the Letting Agent Code of Practice. However, if you are unable to obtain an address you are entitled to submit an application for service by advertisement with a trace report from a Sheriff Officer. Please confirm whether you wish to add Mr Mak or advise if you intend to argue that the letting agent is the landlord for the purposes of the 2016 Act because they said that this was the case.*

*2. It appears that the second tenancy agreement was signed by at least one of the tenants. Please clarify whether the Applicants signed the tenancy agreement or not. If they did so, this agreement supersedes the previous tenancy. This would mean that the Notice to leave could not be used in connection with an eviction action and the Applicants were not obliged to leave the property. However, even if both Applicants did not sign, but did pay the higher rent, this might indicate that they accepted that a new tenancy had started. Please also clarify if the original tenancy was signed.*

*You should consider taking legal advice before you respond.*

*Please reply to this office with the necessary information by 2 January 2025. If we do not hear from you within this time, the President may decide to reject the application."*

9. The Tribunal received no response from the Applicant's representative. On 13 February 2025 the Tribunal emailed her again noting the lack of reply and requesting that the further information be provided by 27 February 2025, failing which the application may be rejected.

10. No further correspondence was received from the Applicant's representative.

### **Reasons for Decision**

11. The Legal Member considered the provisions of Rule 8(1)(c) of the Rules 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.*" In this case the Applicant has been advised that the application would appear misconceived on the basis of the information provided. The Applicant has latterly been asked to provide further information in order to satisfy the Tribunal that the application can be accepted. The Applicant has been asked for this information twice and

has failed to respond. The Applicant's representative has been advised that in the absence of a response the application may be rejected.

12. The Legal Member considers that the Applicant's failure to provide a response to the Tribunal's request for information constitutes good reason as to why it would not be appropriate to accept the application in its current form. In the absence of the information the Tribunal cannot satisfy itself that the application can be accepted to proceed under Rule 110. Accordingly the Legal Member has concluded that the application must be 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: 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.

**Ruth O'Hare, Legal Member**  
**4 April 2025**