



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL  
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER  
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules  
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/CV/25/1155

**Ms Lyekka McLaren (applicant)**

**1/1 1060 Tollcross Road, Glasgow, G32 8UN (the property)**

1. On 16.3.2025 The First-tier Tribunal for Scotland, Housing and Property Chamber (the FTT) received an application from the applicant under rule 111 of the Procedural Rules being an application for civil proceedings in relation to a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The application was accompanied by a document headed Lodger Agreement and an exchange of messages between the applicant and the property owner. The application form contains the information that the applicant moved into the property on 8.4.2023. The address of the respondent landlord was stated as being the same address to which the dispute related.
2. The application asked for a payment order for a refund of what the applicant considers to be overpaid rent.
3. On 11.4.2025 the FTT wrote to the applicant in the following terms: The address provided for the respondent is the same as the address which is the subject matter of the application. This indicates that the respondent also lived in the property. Please clarify if the respondent lived

in the property at the same time as the applicant with both parties being entitled to use shared accommodation. The Tribunal requires this information to determine whether the "lodger agreement" which you have provided is excluded from being a private residential residential tenancy under schedule 1 part 8 of the Private Housing (Tenancies)(Scotland) Act 2016. If it is excluded, the Tribunal does not have jurisdiction to deal with the application. Please reply to this office with the necessary information by 25 April 2025.

4. On 11.4.2025 the applicant replied: I confirm that the respondent lived in the same property with all parties being entitled to use "common" areas. I rented a room from the individual as a "bedsit" arrangement.
5. The documents referred to above are referred to for their terms and held to be incorporated herein.

## **DECISION**

6. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

*"Rejection of application*

*8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –*

*(a) they consider that the application is frivolous or vexatious;*

*(b) the dispute to which the application relates has been resolved;*

*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or*

*(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

*(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."*

7. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

## **REASONS FOR DECISION**

8. The application was made under Rule 111 of the Procedural Rules.
9. The lodging requirements under the rule are set out below:

### **Application for civil proceedings in relation to a private residential tenancy**

**111.** Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

(a) state—

- (i) the name and address of the person;
- (ii) the name and address of any other party; and
- (iii) the reason for making the application;

(b) be accompanied by—

- (i) evidence to support the application; and
- (ii) a copy of any relevant document; and

(c) be signed and dated by the person.

10. An application under this rule can thus only be made if the tenancy in question is a Private Residential Tenancy. As set out in the request for further information, the FTT does not have jurisdiction for an application made under rule 111 if the arrangement is not a Private Residential Tenancy. S 1 of the Act defines a Private Residential Tenancy. Schedule 1 paragraphs 7 and 8 exclude specifically from that definition arrangements where the

landlord is resident in the property. The relevant legislation is set out below.

### **1 Meaning of private residential tenancy**

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **Resident landlord**

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8 This paragraph applies to a 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.

11. Given the information provided by the applicant, it is clear that the property was a property occupied by the landlord in which the applicant had entered into a lodger agreement for a single room and shared common areas. Thus the arrangement was not a Private Residential Tenancy as it was excluded in terms of paragraph 8 of Schedule 1 of the Act. The FTT does not have jurisdiction over such arrangements.

12. It would not be appropriate to accept the application.

### **What you should do now**

**If you accept the Legal Member's decision, there is no need to reply.**

**If you disagree with this decision:-**

**An applicant aggrieved by the 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 first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.**



**Petra Hennig McFatridge**

**Legal Member**

**5 May 2025**