



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 8(1)(a) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/25/0732

Re: Property at 52 LOCHBANK, LADYWELL, LIVINGSTON, EH54 6EH (“the Property”)

Parties:

MISS COURTNEY MARTIN, 52 LOCHBANK, LADYWELL, LIVINGSTON, EH54 6EH (“the Applicant”)

Tribunal Members: Ruth O’Hare, with delegated powers from the Chamber President

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered that the application received by it from the Applicant on 19 February 2025 is frivolous. The Tribunal therefore rejects the application under Rule (8)(1)(a) of the Rules.

Background

- 1 This is an application under Rule 111 of the Rules. The Applicant sought a payment order in the sum of £750.
- 2 In terms of Rule 5(2) of the Rules, a Legal Member of the Tribunal with delegated powers from the Chamber President reviewed the application to determine whether the mandatory requirements for lodgement had been met. On 24 March 2025 the Tribunal wrote to the Applicant by email seeking further information under Rule 5(3) of the Rules in the following terms:-

“Your application has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President.

In your application, you seek an order for payment of £750 in respect of damage caused to your property by a person who previously occupied a room within the property.

The powers of this tribunal are limited by a number of statutes. In particular for tenancies commencing after 1 December 2017, our powers are restricted by the relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016.

The agreement which you have provided would appear to be excluded from being a private residential tenancy ("PRT") under and in terms of that Act (see paragraph 7 of schedule 1 which relate to situations involving "Resident landlords"). Indeed the agreement itself states in paragraph 2 that it is not a PRT for this very reason. The powers of this tribunal, as set out in section 71 of the 2016 Act, only extend to civil proceedings "arising from a private residential tenancy".

If you accept that the agreement you had with your lodger is not a private residential tenancy, then on what basis does this tribunal have jurisdiction to make any order? It would appear that your action may require to be raised in the appropriate Sheriff Court?

Please confirm whether you accept that position and whether you wish to withdraw this application.

The tribunal would suggest that you may find it useful to seek independent legal advice on this application, the matters contained in this letter and any further action which you wish to take.

Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please respond to this letter by 14 April 2025. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017."

- 3 The Tribunal received no response from the Applicant.

Reasons for decision

- 4 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". "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'*.
- 5 I consider that this application is futile and has no prospects of success. The Applicant has submitted an agreement titled "House Share Agreement". The agreement explicitly states that the tenancy between the parties is not a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") *"by reason of being a tenancy granted by a resident landlord"*.

- 6 The tenancy between the parties commenced on 6 December 2023. The Tribunal's jurisdiction with regard to tenancies which commenced after 1 December 2017 is restricted by the provisions of the 2016 Act. In terms of section 71 of the 2016 Act, the Tribunal can only entertain civil proceedings "*arising from a private residential tenancy*." In terms of paragraph 7 of schedule 1 of the 2016 Act a tenancy cannot be a private residential tenancy where the landlord is a resident landlord. There are therefore no powers derived from statute that would enable the Tribunal to consider a claim arising from a tenancy which is not a private residential tenancy in the circumstances of this case.
- 7 I have therefore concluded that the application is futile and has no prospects of success. The application is therefore rejected under Rule 8(1)(a).

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Ruth O'Hare

28 May 2025

Legal Member/Chair

Date