

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/24/4681

Re: Property at 3F, 17 Coates Crescent, Edinburgh, EH3 7AF (“the Property”)

Parties:

Mr Humphrey Yiu, 3F, 17 Coates Crescent, Edinburgh, EH3 7AF (“the Applicant”)

Tribunal Members: Ruth O’Hare, Legal Member 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 7 October 2024 is frivolous. The Tribunal therefore rejects the application under Rule (8)(1)(a) of the Rules.

Background

- 1 This is an application under Rule 83 of the Rules and section 60 of the Rent (Scotland) Act 1984 (“the 1984 Act”). The Applicant sought a determination as to the rent limit for his tenancy.
- 2 The application was reviewed by a Legal Member of the Tribunal with delegated powers from the Chamber President in order to determine whether it had been lodged in the required manner. Following said review the Tribunal wrote to the Applicant by email on 19 November 2024 requesting a copy of the tenancy agreement and copies of the relevant rent adjustment notices, if available. The Applicant subsequently provided a copy of the tenancy agreement and copy correspondence from his landlord’s agent.
- 3 On 14 February 2025 the Tribunal wrote to the Applicant in the following terms:-

“Please also note that an application under rule 83 applies to tenancies which fall under the definition of Part VI of the Rent (Scotland) Act 1984. It appears that the

tenancy you have in place with the respondent is an assured tenancy under the Housing (Scotland) Act 1988. Please explain why you believe the Tribunal has jurisdiction to consider your application under rule 83. Residential tenancies can be a complex area of the law and you may wish to seek advice from a solicitor or advice agency before providing your response."

- 4 On 28 February 2025 the Tribunal received a response from the Applicant in the following terms:-

"I submitted an application for a rent cap under rule #83 because I felt that my tenancy should also be protected and I should have the same rights as other tenants regardless when the tenancy was signed. There could be many tenants got into the same situation as myself because they are not capable to move to another property with a newly signed tenancy. While the landlord or agency realised that many laws would not cover the old tenancies we had signed, we should be advised to sign a new one so that our rights as a tenant can be preserved. That never happened. The law should protect all legal tenants, regardless when the tenancy was signed, and should not discriminate them.

I also believe that some landlords see this as an easily exploitable loophole that they can use to remove long-term tenants with unreasonable increases in rent, regardless the conditions of the property. Tenancy laws should be set to protect the tenants, not the landlords. Therefore, I believe that we should all enjoy the same rights as tenants."

- 5 On 29 March 2025 the Tribunal wrote again to the Applicant advising that his tenancy did not appear to be covered by Rule 83. The Applicant was asked to consider withdrawing the application, failing which the application would likely be rejected. The Tribunal encouraged the Applicant to seek advice from a solicitor or housing agency.
- 6 The Tribunal received no further response from the Applicant.

Reasons for decision

- 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". "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"*.
- 8 I consider that this application is futile and has no prospects of success. An application under rule 83 proceeds under section 60 of the 1984 Act. Section 60 is restricted to regulated tenancies as defined by the 1984 Act. The tenancy between parties in this case is an assured tenancy under the Housing (Scotland) Act 1988. Rule 83 does not therefore apply. The Applicant should instead consider Part II of the 1988 Act, which sets out the framework for rent determinations as they apply to assured tenancies.

9 I therefore consider the application is futile for the above reasons. On that basis, I have no option but to reject the application 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

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Date