



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mr William Law in terms of rule 111 of the Rules.

Case reference FTS/HPC/CV/23/1767

At Glasgow on the 19 September 2023, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules

1. This is an Application by Mr William Law in terms of rule 111 of the Rules. The Application was made on 1 June 2023.
2. The inhouse convenor reviewed the application and the Tribunal wrote to the Applicant on 29 July 2023 seeking further information as follows:

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:

The address for the landlord in the tenancy agreement and the address for the Respondent in the application are the same address as the address you state you resided at when the alleged overpayment arose. You state the application is made under rule 111. Rule 111 relates to civil claims arising out of Private Residential Tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. In terms of Schedule 1 of the 2016 Act tenancies where the landlord is residing in the same property are not Private Residential Tenancies (schedule 3 paragraphs 8 and 9 of the 2016 Act. Please clarify if the landlord was residing in the property with you. If so, please make representations as to how the Tribunal would have jurisdiction in the matter. You may wish to obtain independent legal advice. Please reply to this office with the necessary information by 12 August 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. The Applicant responded on 1 August 2023 as follows:

Yes, I rent a room from the landlord and he was staying there as well within the tenancy period. The landlord provided me and we signed on a Short Assured Tenancy Agreement - within the meaning of section 32 of the Housing (Scotland) Act 1988. Do you mean that I am better to look for a solicitor to represent me for the application or to represent me in the court?

4. The tribunal sent a further email to the Applicant on 22 August 2023 as follows:

The tribunal acknowledges receipt of your email of 1 August. The tribunal cannot provide you with legal advice. You have been previously been informed that Rule 111 relates to civil claims arising out of Private Residential Tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. In terms of Schedule 1 of the 2016 Act tenancies where the landlord is residing in the same property are not Private Residential Tenancies (schedule 3 paragraphs 8 and 9 of the 2016 Act.) In your response you seem to indicate that you appear to have been sharing the house with your landlord. The tribunal's jurisdiction is limited to claims arising from specific types of tenancy. You need to obtain independent legal advice on the remedies which may be open to you and thereafter to indicate whether you believe this tribunal has the jurisdiction to deal with your claim. 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 5 September 2023.

5. The Applicant sent a further response to the Tribunal on 4 September 2023 stating he was unable to engage a solicitor and his only remedy was to claim through the tribunal.
6. 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”***.
7. ***“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. This Application is in my view misconceived and it has no prospect of success. The Applicant's landlord was residing in the property as resident landlord. A private residential tenancy was not therefore constituted as resident landlord is one of the exclusions as set out in schedule 1 paragraphs 7, 8 and 9 of the Private Housing (Tenancies)(Scotland) Act 2016. If a private residential tenancy has not been constituted, rule 111 is not appropriate as this rule relates to civil proceedings arising out of a private residential tenancy.
9. The Tribunal can reject an application in terms of Rule 8(c) if they have good reason to believe that it would not be appropriate to accept it. This Application will not succeed as rule 111 does not apply to the Applicant's circumstances. I therefore have good reason to consider that it would not be appropriate to accept this Application.

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.



Lesley Anne Ward

Legal Member