



**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/22/3796

Main House, 17 Helenslee, Dumbarton, G82 4AN (the property)

Parties

Mr Mo Manak (Applicant)

McCandlish Farmhouse Confectionery Ltd (Respondent)

Blacklocks (Applicant's Representative)

1. On 17.10.22 the application was made under Rule 111 of the Procedural Rules being an application for Civil Proceedings in relation to a Private Residential Tenancy.
2. The Respondent is stated as McCandlish Farmhouse Confectionery Ltd.
3. The following documents were ultimately lodged in connection with the application:- a lease document for the property for an initial term from 28.4.21 to 28.4.21, rent statement, demand letter of 3.10.22 and an email from the Applicant's representatives

dated 18.11.22 giving the following explanation to the enquiries made by the Tribunal in the letter of 14.11.22: "I refer to the above and to your letter dated 14 November 2022. The Landlord, Mo Manak, director of Barton Carmelite Limited along with his wife and children, rented the property to Agnes Gough as a residential house for her and her family, and not a business premises. The tenancy agreement stipulates that no business is to be carried out from the property. The tenant, Agnes Gough's references did not pass the requirements for renting purposes which is the reason that she wanted the tenancy agreement signed in her company name. Her accountant had supplied a document to prove that she had adequate funds to pay her rent liability. The property was purchased through Mr Manak's company name as his pension fund. His letting agents, Robb Residential used Mr Manak's name on the contract as he is the director involved with rental dealings."

4. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

6. 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

7. The jurisdiction of the Tribunal in civil matters arises out of S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act), which states: First-tier Tribunal's jurisdiction
“(1)In relation to civil proceedings arising from a private residential tenancy—
(a)the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
(b)a sheriff does not have competence or jurisdiction.
(2)For the purposes of subsection (1), civil proceedings are any proceedings other than—
(a)the prosecution of a criminal offence,
(b)any proceedings related to such a prosecution.”
8. The term private residential tenancy is defined in S 1 of the Act as follows:
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.”

9. The tenancy agreement is not between individuals but states as the tenant a limited company, McCandlish Farmhouse Confectionery Ltd. Clause 12 defines as the use of the property that “it is understood that, subject to clause 13, the Tenant will allow their employees or other individuals with their consent to reside within the Subjects. It is expressly agreed that if they shall allow the employees or other individuals to occupy the Subjects as their only or principal home then the said employees or other individuals shall do so without payment of rent to the Tenant and under license only ...” .
10. The Tenant is a limited company and not an individual and the agreement makes provision for the limited company to house employees and other individuals in the property. The fact that the use of the property as business premises is explicitly excluded does not detract from the fact that the purpose of the agreement is to allow the tenant to provide residential premises for employees of the company, rather than for the company who is the tenant. Even if the intention of the parties may have been for a specific individual, Ms Gough, to reside there initially, she is only referred to in her capacity as the director of the limited company and there is nothing to specify that she will occupy the property as her only or principal home and the agreement clearly gives the tenant company the option of housing other individuals in the property.
11. In terms of the documents lodged, the tenant named in the tenancy agreement and the Respondent named in the application are a limited company rather than an individual as required in S 1 (a) of the Act and the tenancy agreement clearly does not limit the use of the property as the only or principal home for the tenant, who is a limited company and as such cannot occupy the property (or any part of it) as the tenant’s only or principal home as required in terms of S 1 (b) of the Act. The agreement lodged is not a private residential tenancy as it does not meet the requirements of S 1 (a) and (b) of the Act. Thus the civil proceedings regarding rent for the property do not arise from a private residential tenancy.

12. The Tribunal does not have jurisdiction in the case raised under rule 111 of the Rules of Procedure and S 71 of the Act and it would thus 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
12 December 2022