



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR
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
Flat 6/51 Deanhaugh Street, Stockbridge, Edinburgh ("the property")**

Case Reference: FTS/HPC/CV/21/2281

Emmett Rock, 124 Lothian Road, (Flat 85), Edinburgh ("the Applicant")

**Christopher Greaves, Flat 6/51 Deanhaugh Street, Stockbridge, Edinburgh ("the
Respondent")**

1. The Applicant seeks a payment order for the return of a tenancy deposit in terms of Rule 111 of the Procedural Rules and Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). In the application form, the address provided for the Respondent is the same as the property address.
2. In response to a request for further information, the Applicant confirmed that the Respondent had been resident at the property during his occupation and stated that he had been subletting from the Respondent. A further letter was issued, referring the Applicant to the terms of the 2016 Act, and asking him to explain why he believed that the Tribunal had jurisdiction to entertain the

application. On 6 January 2022, the Applicant again confirmed that the Respondent had resided at the property with him and stated that he thought that Tribunal would have jurisdiction. Although he indicated that he would withdraw the application if he were mistaken, he did not confirm that he wished to withdraw it.

DECISION

3. The Legal Member 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."

4. After consideration of the application, the attachments and correspondence from the Applicant, the Legal Member determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a).

REASONS FOR DECISION

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The Tribunal has jurisdiction to deal with civil matters arising out of the 2016 Act in terms of section 71. This states "(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."
7. Section 71 relates only to private residential tenancies under the 2016 Act. Section 1 provides a definition of "private residential tenancy" for the purposes of the Act. This states "(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." **In terms of Paragraphs 7 and 8 of Schedule 1 (Resident Landlord), a tenancy cannot be a private residential tenancy if "(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”.

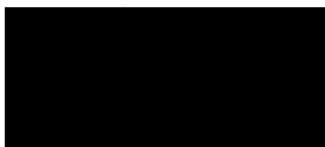
8. The Applicant describes himself as a subtenant of the Respondent. He did not have exclusive use of the property as the Respondent also resided there. As the Applicant was a resident “landlord”, the tenancy between the parties was not a private residential tenancy in terms of the 2016 Act.
9. As the Tribunal does not have jurisdiction to deal with the application in terms of Section 71 of the 2016 Act, the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.



**Josephine Bonnar
Legal Member
25 January 2022**