



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 Wenjie Lin ostensibly in terms of rule 70. 91 and 111 of the Rules.

Case reference FTS/HPC/CV/22/1992; FTS/HPC/CV/22/1993 and FTS/HPC/CV/22/1994

At Glasgow on the 2 November 2022, 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 Wenjie Lin dated 21 June 2022 and entered into the case management system of the tribunal chamber on 24 June 2022. Mr Lin stated in his application that he wished to proceed in terms of rules 70. 91 or 111. There were no supporting documents lodged with the application. The application made reference to a tenancy deposit and it appeared that rule 103 may be applicable. It was not clear what type of tenancy the applicant had entered into. As the applicant made reference to all three rules the tribunal assigned three case number for each rule pending a review by the in-house convenor. The rule 70 application was allocated FTS/HPC/CV/22/1992, the rule 91 was allocated FTS/HPC/CV/22/1993 and the rule 111 was allocated FTS/HPC/CV/22/1994.
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 11 July 2022 seeking further information as follows:

Your application has been reviewed by the In-House Convenor who has raised the following matters:

You appear to have lodged the same application based on three apparently different rules.

Rule 70 of the tribunal rules relates to civil proceedings arising from an assured tenancy. Rule 91 applies to proceedings arising from a regulated tenancy. Rule 111 applies to civil proceedings arising from a private residential tenancy. Please confirm what type of tenancy you have. You will only be able to proceed under one of these rules.

Please confirm whether you continue to reside in the property or whether the tenancy has terminated.

Your application appears to be based on an alleged failure of your landlord to lodge a deposit paid by you in one of the relevant tenancy deposit schemes. If that is the case then it would appear that your application should actually be made under rule 103 of the tribunal rules which relates to applications being made in relation to a failure by a landlord to carry out duties in respect of tenancy deposits. Can you please clarify the terms of your application.

The tribunal also requires to see a copy of your tenancy agreement, proof that you have paid a tenancy deposit, evidence from the tenancy deposit scheme that your deposit has not been lodged and confirmation from you that your tenancy is continuing or confirmation of the date it was terminated.

It is also noted that in the section requiring your details you have indicated that the University of Strathclyde is the company or organisation name. We presume that you are raising this application as a private individual and that the application is not being raised on behalf of the University itself. Can you please confirm same and confirm that we may remove the name of the university as the name of the applicant.

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 reply to this request within three weeks of the date of the letter. You may find it useful to seek independent legal advice from a solicitor or an advice agency on these issues.

If you fail to respond to this letter then the tribunal may reject your application. Please bear in mind an application under Rule 103 must be made no later than three months after a tenancy comes to an end. Please reply to this office with the necessary information by 25 July 2022. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

3. The applicant did not respond. A reminder was sent on 11 August 2022 seeking a response within 14 days. The applicant did not respond. The in-house convenor reviewed the application again in October 2022 and a further detailed letter was sent to the applicant on 3 October 2022 as follows:

Before a decision can be made, we need you to provide us with the following:

- Please confirm that the Applicant should be Mr Wenjie Lin and not the University of Strathclyde.
- As previously indicated, you have referred to three different Rules and therefore three separate applications have been registered. Please confirm that you only wish to make one application.
- It appears that you have used the wrong Form and referred to the wrong Rules. If you are seeking compensation for a failure to lodge your deposit in an approved scheme you must submit a Form G and refer to Rule 103. You should also confirm that the three current applications are to be withdrawn. If you are doing this you will need to provide

- (a) A copy of your tenancy agreement or as much information as you can about the tenancy such as the start date, the amount of rent and the amount of the deposit. Supported by the Scottish Courts and Tribunals Service www.scotcourtsribunals.gov.uk
- (b) Evidence that you paid a deposit.
- (c) Confirmation that the landlord does or did not reside in the property with you, as you have stated in the forms submitted that the property is both the Applicant and the Respondent's address.
- (d) The date on which the tenancy ended, with evidence of this, or confirmation that you still live at the property.
- (e) Evidence that the deposit was not lodged in a scheme, if available. Please note that the application will be rejected if you do not provide the required information. Please also note that an application under Rule 103 must be lodged with the Tribunal no later than three months after the tenancy has ended.
- Please reply to this office with the necessary information by 17 October 2022. If we do not hear from you within this time, the President may decide to reject the application.

4. The applicant wrote to the tribunal on 10 October 2022 sending a portion of a private residential tenancy agreement and a receipt for a payment of £1574.06 on 16 November 2021. The applicant stated the following:

Dear Tribunals Centre, Thank you for your reply, please see the attachment for the contract.

I am prosecuting in the name of Mr Lin Wenjie and not the University of Sclyde.

I am very sorry for my citation of the wrong clause. Since I'm not a professional, please help me choose a closest term.

My landlord does not live with me and has his address in our contract. Thank you very much, please feel free to contact me if you need anything. Best wishes, Wenjie Lin

5. Rule 70 relates to assured tenancies and rule 91 relates to regulated tenancies. As the applicant has entered into a private residential tenancy agreement rules 70 and 91 cannot apply. Regarding the remaining application in terms of rule 111 the applicant has failed to respond to the remainder of the tribunal's detailed request for information. The applicant has failed to clarify what his application relates to and whether he wishes to amend this application to one under rule 103.
6. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if '**they consider that a 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. I consider that applications under rule 70 and 91 are frivolous or vexatious and have no reasonable prospect of success. Further the remaining application under 111 has no reasonable prospect of success as the essential information required for it to proceed has not been provided, despite two detailed request being sent by the

tribunal and a reminder. It is 4 months since the application was sent to the tribunal and matters are no further forward.

9. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is incomplete and the applicant has failed to cooperate with the tribunal in the execution of its duties.

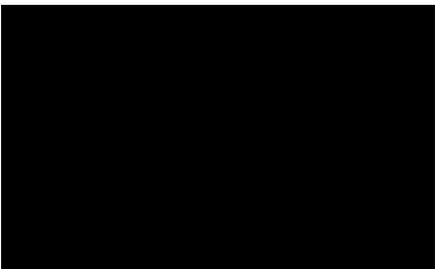
10. It is open to the applicant to resubmit an application under rule 103 if so advised, bearing in mind that this requires to be made within three of the tenancy coming to an end.

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.



Legal Member