



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 Dr Zinian Zhang in terms of Rule 111 of the Rules.

Case reference FTS/HPC/CV/22/3120

At Glasgow on the 27 September 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 Dr Zinian Zhang in terms of rule 111 of the rules. The application is dated 30 August 2022 and was entered into the chamber case management system on 31 August 2022. The application appears to be attempting to seek damages in respect of an alleged breach of a tenancy agreement and a failure to lodge a tenancy deposit.
2. I have reviewed this application as inhouse convenor today. Rule 111 applies to civil proceedings in relation to a private residential tenancy. The applicant has provided a copy of a ‘lodger agreement’ that he entered into with Ms Ann McIntosh. There is no date on the agreement but it refers to the applicant moving into a room in the property at 41 Earlbank Avenue Scotstoun as a lodger. The agreement and the other correspondence the applicant has lodged shows that the Ms McIntosh resides in the property.
3. Paragraph 7 of schedule 1 of the Private Housing (Tenancies)(Scotland) Act 2016 provides:

Resident landlord

7A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

8This paragraph applies to a tenancy if—

(a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person ("shared accommodation"), and

(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.

4. If the applicant is renting a room from the respondent and the respondent is residing in the property as a resident landlord the agreement cannot be a private residential tenancy. If the agreement between the parties is not a private residential tenancy agreement rule 111 does not apply. Even if the agreement was a private residential tenancy agreement, it appears that the applicant is seeking damages for an unlawful eviction and rule 111 would not be applicable in any event.
5. Further, if the applicant is seeking a penalty regarding a failure to lodge a deposit, rule 111 is not applicable.
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*'.
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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 this application is frivolous or vexatious and has no reasonable prospect of success as a private residential tenancy has not been constituted and rule 111 does not apply. 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 misconceived.

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 Ward

Lesley Anne Ward

Legal Member