



DECISION AND STATEMENT OF REASONS OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

In respect of

150 Renfrew Street, Glasgow, G3 6RF.

Case Reference: FTS/HPC/PR/19/0881

At Glasgow on 17 April 2019, Andrew McLaughlin, Legal Member of the First-Tier Tribunal with delegated powers of the Chamber President, rejected the above application in terms of rule 8 of the Rules for the following reasons:

1. The Applicant raises an Application in respect of Rule 103 for an Order for Payment where the landlord has not paid a deposit into an approved scheme relevant to Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The Applicant has disclosed to the Tribunal that the Respondent lived with the Applicant, who rented a room in the Respondent’s home. The property in question is therefore the Respondent’s principal home.
3. The Tenancy Deposit Schemes (Scotland) Regulations 2011 at Regulation 3 provides that (with my emphasis added in bold):

Duties in relation to tenancy deposits

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and
- (b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

- (a) in respect of which the landlord is a relevant person; and**
- (b) by virtue of which a house is occupied by an unconnected person,**

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

5. **(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.**
6. Section 83(6) of the Antisocial Behaviour etc (Scotland) act 2004 provides that (and again with my emphasis added in bold):

For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if—

(a) the house is being used for the provision of—

(i) a care home service (as defined in paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010(asp 8));

(ii) a school care accommodation service (as defined in paragraph 3 of that schedule);

F5(iii).

(iv) a secure accommodation service (as defined in paragraph 6 of that schedule);

(v) an independent hospital (as defined in subsection (2) of section 10F of the Public Services Reform (Scotland) Act 2010 (asp 8));

(vi) a private psychiatric hospital (as defined in that section);

(vii) an independent clinic (as defined in that section); or

(viii) an independent medical agency (as defined in that section);

(b) the house is being used by a religious order the principal occupation of which is prayer, contemplation, education or the relief of suffering;

(c) a control order under section 178 of the Housing (Scotland) Act 1987 (c. 26) is in force in respect of the house;

F8. . .

(d) the house is being used for holiday purposes.

(e) the house is the only or main residence of the relevant person;

(f) the house is—

(i) on agricultural land which is land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 or comprised in a lease constituting a short limited duration tenancy limited duration tenancy, modern limited duration tenancy or repairing tenancy (within the meaning of that Act); and

(ii) occupied by the tenant of the relevant lease;

(g) the house is on a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993

(h) the house is—

(i) on a holding to which any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies;

(ii) not situated in the crofting counties (within the meaning of the Crofters (Scotland) Act 1993); and

(iii) occupied by the landholder;

(i) the house is occupied by virtue of a liferent;

(j) the house is—

- (i) owned by an organisation which has the advancement of religion as its principal purpose and the regular holding of worship as its principal activity; and
- (ii) occupied by a person whose principal responsibility is the leading of members of the organisation in worship and preaching the faith of that organisation;
- (k) the house is part of an estate of a deceased person and has been held by an executor for a period not exceeding 6 months from the date of death;
- (l) the house is in the lawful possession of a heritable creditor and has been held by that creditor for a period not exceeding 6 months from the date of possession;
- (m) the house is owned by a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 and has been so owned by that person for a period not exceeding six months.

7. The use of the house is therefore of a type described in s83 (6) of the 2004 Act.
8. Accordingly the Respondent is not a Relevant Person which means that the Respondent is not bound by the terms of Regulation 3. Accordingly the Application is not competently brought under Rule 103.
9. I consider that in light of this, that it is not appropriate to accept the Application in terms of Tribunal Rule 8 (C) which allows for an Application to be rejected by a Legal Member of the Tribunal on behalf of the Chamber President if "*they have good reason to believe that it would not be appropriate to accept the application.*" The Application is therefore rejected.

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 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 seek permission to appeal within 30 days of the date the decision was sent to them.

Mr Andrew McLaughlin

Legal Member

17 April 2019