



**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 Ms Wei Zheng terms of Rule 67 of the Rules.

**Case reference FTS/HPC/PR/22/3217**

At Glasgow on the 7 October 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 Ms Wei Zheng.
2. The application was dated 3 September 2022 and received by the tribunal on 6 September 2022. Ms Wei stated in her application that she was the landlady of the property of 2-5 Earl Street Hawick and she wants to “make an application to settle the removal expenses of £7760 caused by the tenants Gagandeep Sharma and his family”. The application goes on to narrate that Ms Zheng’s tenants stayed in her property from 23 November 2017 until 23 January 2022 and when they moved out they left the place in a mess.
3. The application was made in terms of rule 67 of the Rules. This rule provides:

**Application to determine removal expenses**

67. Where a landlord and tenant cannot agree the amount payable by the landlord to the tenant under section 22(1) of the 1988 Act, either the landlord or the tenant may make an application under section 22(2) (payment of removal expenses in certain cases) of the 1988 Act and the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

- (ii) the name, address and profession of any representative of the landlord;
  - (iii) the name and address of the tenant;
  - (iv) the name, address and profession of any representative of the tenant; and
  - (v) the details of the tenant's claim for expenses, reasons for disagreement and proposals for settlement; and
- (b) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

4. Section 22 of the Housing (Scotland) Act 1988 provides:

**Payment of removal expenses in certain cases.**

(1) Where the [F1 First-tier Tribunal] makes an order for possession of a house let on an assured tenancy on Ground 6 or Ground 9 in Schedule 5 to this Act (but not on any other ground), the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the house.

(2) Any question as to the amount payable by the landlord to a tenant by virtue of subsection (1) above shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the [F2 First-tier Tribunal] .

5. Rule 67 therefore applies to cases where a landlord has been granted the type of eviction order where he has an obligation to pay the removal expenses of a tenant. Ms Zheng has characterised her application as relating to 'removal expenses' but it appears to me that she is in fact seeking damages from her tenant due to the condition in which she alleges they left her property, which is something completely different. Rule 67 does not apply to the application made by Ms Zheng. Rule 70, which relates to applications for civil proceedings in relation to an assured tenancy, may apply.

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**". "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".

7. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. 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. Rule 67 does not apply to the circumstances of the applicant.

8. It is open to Ms Zheng to reapply under the correct rule.

**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 Anne Ward

Legal Member