



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/PR/23/0138**

**Re: 23/4 Blackwood Crescent, Edinburgh, EH9 1RA ("the Property")**

**Parties:**

**Yiwen Feng ("the Applicant")**

**Yi Chai ("the Respondent")**

**Tribunal Member:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the Tribunal under Rule 103 and Rule 99 on 16<sup>th</sup> January 2023 with copy tenancy agreement purporting to be a shorthold tenancy agreement.
2. The application was considered by a legal member of the Tribunal and by letter dated 18<sup>th</sup> January 2023, the following information was requested from the Applicant:
  1. Please clarify the address of the property which is the subject of the application. You have indicated that it is the same as the Applicant's address but it appears from the tenancy agreement that it is the same as the address provided for the Respondent.

2. Please confirm if the Respondent (landlord) also resides at the property. If this is the case, the Tenancy Deposit Regulations do not apply as they do not apply where there is a resident landlord. If the Landlord does not reside at the property you must provide a current address for them for service of the application. If you do not have an address you must submit an application for service by advertisement with a trace report from a Sheriff Officer. The form can be found on the Chamber website.

3. Please provide evidence of payment of a deposit as the tenancy agreement does not specify a figure.

4. Please provide evidence that the tenancy ended on 15 December 2022.

5. Please provide an amended application form. You have indicated that you are seeking an order for repayment of the deposit. However, Rule 103 can only be used to seek a penalty of up to three times the amount of the deposit. The form must specify what is being sought. If you are also seeking repayment, you must submit a separate application under Rule 111.

Please note that an application under Rule 103 must be submitted with all required information and documents no later than 3 months after the tenancy has ended.

Please also note that an application under Rule 99 has not been registered. This rule can only be used by a landlord who wishes to appeal against a refusal by the Local Authority to register them. If you have concerns about the Respondents registration status, you should contact the relevant Local Authority.

Please reply to this office with the necessary information by 1 February 2023. If we do not hear from you within this time, the President may decide to reject the application

3. By email dated 23<sup>rd</sup> January 2023, the Applicant responded to provide the address of the Property, evidence of payment of the deposit, information regarding the end date of the tenancy, and confirmation that she was seeking an award of up to three times the tenancy deposit. In relation to the type of tenancy, the Applicant stated:

*I have the rent with her 3 month , the first month when I new move in she did not live in the property and live in London. The second month she back to her property. The third month because I am unwell and went to hospital did not live her property.*

4. The application was considered by a legal member of the Tribunal and by letter dated 30<sup>th</sup> January 2023, the following information was requested from the Applicant:

- It appears from your response that the Respondent was a resident landlord and that you were a lodger in her home. If this is the case, the regulations do not apply. Please explain why you believe that the application can proceed. You may wish to take legal advice or consult a housing advisory service such as Shelter, before you respond.
- If the application is to proceed please note that copies of all documents will be given to the Respondent. You have submitted un-redacted bank statements and documents containing sensitive medical information. If you do not wish these to be crossed over, please advise if you wish to withdraw them or replace them with redacted versions. Please also confirm the Respondent's current address.

Please reply to this office with the necessary information by 6 February 2023. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

5. The application was considered by a legal member of the Tribunal and a further opportunity was afforded to provide the information requested by 15<sup>th</sup> February 2023, failing which, the application may be rejected. No response was received.
6. The application was considered by a legal member on 3<sup>rd</sup> March 2023.

### **Reasons for Decision**

7. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;*

*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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."*

8. '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"*.
9. The application cannot be accepted as, on the information before the Tribunal and in the absence of any further response from the Applicant, it would appear that the Respondent was a resident landlord, and the tenancy was not a relevant tenancy in terms of Regulation 3 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ('the Regulations'), which provides:
  - (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.*
  - (4) *In this regulation, the expressions "relevant person" and "unconnected person" have the meanings conferred by section 83(8) of the 2004 Act.*
10. The Antisocial Behaviour (Scotland) Act 2004 ("the 2004 Act") provides at section 83(6) that the use of a house as a dwelling shall be disregarded if the house is the only or main residence of the relevant person. The 2004 Act provides at section 83(8) that a relevant person is a person that is not a local authority, a registered social landlord, or Scottish Homes. An unconnected person means a person who is not a member of the family of the relevant person. It is clear in this case that the Respondent is a relevant person and the Applicant is an unconnected person; however, it would seem that the Property was the only or main residence of the Respondent.
11. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is misconceived and has no prospect of success.
12. It would not be appropriate to accept the application.
13. The application is accordingly rejected.

## Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Helen Forbes

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Legal Member/Chair

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3<sup>rd</sup> March 2023  
Date