

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

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

in connection with

47 Easter Langside Crescent, Dalkeith, EH22 2FN ("the property")

Case Reference: FTS/HPC/PR/22/0534

Parties

Miss Herminia Margarita Berdasco Munoz (Applicant)

Mrs Bernadette Baselal (Respondent)

1. The application dated 18 February 2022 was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 103 of the Procedural Rules under regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The applicant stated in the attached documents, which are referred to for their terms and held to be incorporated herein, that she was applying for an order for 3x the deposit

sum of £200 and that the end date was stated in the message exchange. The Applicant lodged a document headed Lodger Agreement with the application, which was listed as copy tenancy agreement under item 8 of the application form.

3. The Lodger Agreement states that the agreement entered into is for a double bedroom in a furnished house at the property, for which the householders are the Respondent and one other person. The address for the Respondent given on the application is the address of the property, 47 Easter Langside Crescent, Dalkeith.
4. The FTT wrote to the Applicant on 28 February 2022 in the following terms: *"You have included a lodger agreement with your application. It would seem that that the Respondent was residing at the same address as the tenancy. The Tenancy Deposit Schemes (Scotland) Regulations 2011 do not apply to situations where the property is the main residence of the landlord. It would seem, therefore, that this property is exempt from the Regulations and that your application cannot be accepted. You may wish to take advice on this matter before considering whether to withdraw your application."* The Applicant was asked to provide a reply by 14 March 2022. No reply was received.
5. The FTT further wrote to the Applicant again on 28 March 2022 in the following terms: *"Please respond to the previous further information request. Please reply to this office with the necessary information by 4 April 2022. If we do not hear from you within this time, the President may decide to reject the application."* To date no reply has been received.

DECISION

6. I considered the application in terms of Rule 8 of the 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;

(b) the dispute to which the application relates has been resolved;

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

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar

application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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."

7. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

8. In terms of regulation 3 (3) of The Tenancy Deposit Schemes (Scotland) Regulations 2011 “(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.
9. In terms of section 83 (6) of the Antisocial Behaviour etc. (Scotland) Act 2004 a tenancy is described as an excluded tenancy amongst other examples:
(6)For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if—.... (e)the house is the only or main residence of the relevant person;
10. The application is rejected because the agreement lodged with the application clearly disclosed that the Respondent resided at the property as the main householder at the time the Applicant lived at the property and the application information shows that the

Respondent continues to reside there as the property address is stated as the proper address for the Respondent on the application. The Applicant was provided with two opportunities to address this matter and was clearly advised to seek legal advice. No reply was received.


11. An application under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 can only be made with regard to a qualifying tenancy as described in Regulation 3(3). A situation where the property in question is also the residence of the person who otherwise would be considered the relevant person to register as a landlord is specifically excluded as a relevant tenancy in terms of section 83 (6) (e) of the Antisocial Behaviour etc. (Scotland) Act 2004 and thus the documentation lodged with the application and the description of the Respondent in the application indicate that the arrangement in question is not a qualifying tenancy in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
12. It would not be appropriate for the FTT to accept an application to which the Regulations do not apply because it would not have jurisdiction to deal with an application under Rule 103 and Regulation 9 of the said Tenancy Deposit Schemes (Scotland) Regulations 2011 if the underlying agreement does not constitute a qualifying tenancy in terms of Regulation 3 (3).

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

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 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. Information about the appeal procedure can be forwarded to you on request.



Petra Hennig McFatridge
Legal Member
6 April 2022