



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/3790**

**Re: Property at 8 Lomond View, Drongan, East Ayrshire, KA6 7BS (“the Property”)**

**Parties:**

**Ms Donna Riley, 8 Lomond View, Drongan, KA6 7BS (“the Applicant”)**

**Mr Jeffrey Halley, Mrs Julieanne Roberts, Address Withheld, (“the First and Second Named Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision (in absence of the Applicant)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.**

**Background**

1. By application dated 16 August 2022 the Applicant applied to the Tribunal for an order for payment in respect of alleged rent arrears and damages arising from the Respondents’ tenancy of the property. The Applicant submitted correspondence from the Letting Protection Service Scotland and text messages with the Respondent in support of the application
2. Following further correspondence between the Applicant and the Tribunal administration the Applicant provided a copy of the tenancy agreement, a rent statement and full details of the claim.
3. By Notice of Acceptance dated 18 January 2023 a legal member of the Tribunal accepted the application and a Case Management Discussion (“CMD”) was assigned.

4. Intimation of the CMD and case papers on the Respondents by Sheriff Officers was unsuccessful as the Respondents had moved to the USA.
5. A CMD was held by teleconference on 21 March 2023 and was adjourned to allow service of the case papers on the Respondents by post at an address provided by the Applicant.
6. Service of the case papers on the First Named Respondent was apparently successful. The case papers sent to the Second Named Respondent were returned as undelivered.
7. A Case Management Discussion ("CMD") was held by teleconference on 6 June 2023. The Applicant attended in person. Neither Respondent attended or was represented. The Tribunal being satisfied that the First Named Respondent had been given proper intimation of the CMD determined to proceed in his absence. The Applicant said she understood the Second Named Respondent was now married to the First Named Respondent and used the surname Halley and that was probably why the case papers had been returned. The Applicant advised the Tribunal that she was prepared to proceed with the application against the First Named Respondent alone. The Tribunal noted that the Respondents were jointly and severally liable.
8. The Tribunal considered the oral and written representations provided by the Applicant and in the absence of any representation from the Respondents granted an order for payment by the First named Respondent to the Applicant in the sum of £9431.38.
9. By emails dated 20 and 29 June 2023 and subsequent emails on 7 and 18 July 2023 the Respondents submitted extensive written representations firstly disputing that the First Named Respondent had ever been served with the case papers and intimation of the CMD and also disputing the Applicant's claims. By email dated 20 July 2023 the Respondents submitted an application for recall of the decision although late. They also requested that their current address was not disclosed to the Applicant.
10. The Tribunal requested further clarification from the Respondents with regards to their reasons for withholding their address and by email dated 7 August 2023 the Respondents provided further written representations. The Tribunal granted the recall of its decision of 6 June 2023 and assigned a further CMD and deferred further consideration of the Respondents' request to withhold their address to the adjourned CMD.

### **The Case Management Discussion**

11. A CMD was held by teleconference on 14 February 2024. The Respondents attended in person. The Applicant did not attend nor was

she represented. The Tribunal clerk attempted to contact the Applicant by telephone without success. After delaying the start of the CMD for several minutes the Tribunal proceeded in the absence of the Applicant after being satisfied that proper intimation of the date and time of the discussion had been sent to the Applicant by email.

12. The Respondents explained that they wished the application to be resolved. The Second Respondent said that continuing the application was not good for anybody and that it had been causing her anxiety. She said everybody needed to move on.

### **Reasons for Decision**

13. The overriding objective of the Tribunal is to deal with the proceedings justly. This includes avoiding delay so far as compatible with the proper consideration of the issues. The application was first submitted to the Tribunal in August 2022 and it is therefore important that the application is determined without further unnecessary delay.
14. The Tribunal noted that the Applicant has not communicated with the Tribunal administration since the CMD on 6 June 2023 and in particular has submitted no written representations in response to the Respondents' application for recall or their written representations in opposition to the application.
15. In the absence of the Applicant the Tribunal allowed the Respondents address to be withheld in the meantime pending any further proceedings.
16. Despite being advised of the date and time of the CMD the Applicant did not attend nor was she represented nor did she seek a postponement. The Tribunal clerk attempted to contact the Applicant to give her an opportunity to attend the CMD without success. In the absence of the Applicant the Tribunal was not in a position to ascertain what the issues were or what facts could be agreed or what would be the next appropriate procedure. This all required the co-operation of the Applicant in the proceedings and without the Applicant being present the Tribunal was unable to deal with the proceedings justly or fairly. The Tribunal therefore determined to dismiss the application in terms of Rule 27(2) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

### **Decision**

17. The application is dismissed.

## **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.**

**Legal Member/Chair**

**14 February 2024**

**Date**