



Decision Under Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/18/2114

Re: Property at 56H Arbroath Road, Dundee, DD4 6ER (“the Property”)

Parties:

Ms Fionnualagh Miller, 30-34 Commercial Road, Mount Evelyn, Melbourne, Victoria, VIC 3796 (“the Applicant”)

Mr Scott Davidson, formerly of 56H Arbroath Road, Dundee, DD4 6ER and present whereabouts unknown (“the Respondent”)

1. On 10 August 2018, an application was received from the Applicant. The application was made under Rule 70 of the Chamber Procedural Rules being an application for an order for payment in relation to unpaid rent and other costs arising from breach of a tenancy agreement.
2. The application was accepted by the Tribunal on 27 September 2018 and a case management discussion by telephone conference call was fixed to take place on 12 November 2018.
3. On 12 November 2018 there was no contact from the Respondent. The Applicant had attempted to join the telephone conference call, however had been unsuccessful in doing so. The legal member therefore adjourned the case management discussion to a future date to allow the Applicant to take part, and also requested that the Applicant provide further information in relation to the application, namely confirmation if the Respondent was still residing in the property; the Respondent's up-to-date address; and confirmation of the total sum sought by the Applicant and a breakdown of what that sum related to. The case was adjourned until 31 May 2019.
4. Prior to the 31 May 2019 the Applicant provided the further information requested, this included that the Respondent had left the property and his current address was unknown. Service by way of advertisement therefore took place.
5. On 31 May 2019 no party took part in the telephone conference call case management discussion. Given that the Applicant had however provided further information as requested to do so, and as she was calling in from Australia, the legal member did not dismiss the case, but adjourned it to a further future date. The legal member asked that confirmation be obtained from the Applicant as to whether she wished to continue with her application. In addition further information was requested from the Applicant to

support her claim for damages to the property. These matters were set out in a case management note. Reference is made to that note.

6. On 3 June 2019 the Applicant was written to by the Tribunal enclosing a copy of the case management note and seeking a response to the matters raised in it within 7 days. There was no response to that email.
7. A further reminder was sent to the Applicant by email on 1 July 2019. There has been no response to that email.
8. A final reminder was sent to the Applicant by email on 13 August 2019, in that email the Applicant was advised that if no response was received it was likely that the case would be dismissed. There has been no response to that email.

DECISION

9. Rule 27 of the Chamber Procedural Rules deals with dismissal of a party's case. It provides that the Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.
10. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be dismissed as I am unable to deal with the application justly and fairly.

REASONS FOR DECISION

11. I consider that the Applicant's failure to cooperate with the Tribunal by failing to provide evidence to support the application, to take part in the scheduled case management discussions and to confirm if she still wishes to proceed with her application, gives me good reason to believe that it would be appropriate to dismiss the application.
12. Accordingly, for this reason set out above, this application has been dismissed in terms of Rule 27 (2) (b) of the Procedural Rules.

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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Melanie Barbour

Legal Member/Chair

11.9.19

Date

