



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/20/2661

Re: Property at 12 Caley Brae, Uddingston, G71 7TA (“the Property”)

Parties:

Mr Graham Devine, 4 Gailes Park, Bothwell (“the Applicant”)

Mr Juan Martin Bailo, 0/2 159 Wellshot Road, Glasgow, G32 7AU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Dickson (Ordinary 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 21 December 2020 the Applicant applied to the Tribunal for an order for payment in respect of a claim arising from the Respondent’s tenancy of the property under a Private Residential Tenancy Agreement. Following correspondence with the Tribunal administration the Applicant submitted a copy of the tenancy agreement and a receipt for a mirror together with further written representations.
2. By Notice of Acceptance dated 22 January 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion (“CMD”) was assigned.
3. The Tribunal issued Directions to the Applicant dated 22 January 2021.

4. The Applicant submitted further written representations and documentation in response to the Directions by email dated 7 February 2021.
5. By emails dated 23 February, 2 and 7 March 2021 the Respondent submitted written representations to the Tribunal.
6. The Applicant submitted further written representations by email dated 25 February 2021.
7. The Respondent's request for a postponement of the CMD dated 7 March 2021 was refused by the Tribunal.
8. A CMD was held by teleconference on 8 March 2021. The Respondent did not attend. The CMD was adjourned to await the outcome of any adjudication under the Safe Deposit Scheme (Scotland) Regulations 2011.
9. A further CMD was held by teleconference on 9 June 2021. Both parties were in attendance. A hearing was assigned. The Tribunal issued directions to the parties to provide documents by 25 June 2021.
10. By email dated 15 June 2021 the Applicant submitted a postponement request asking that the hearing be postponed until such time as face-to-face hearings are reinstated. The Tribunal refused the request as it is not known when such hearings may resume. However, the Tribunal of its own accord decided that it would not be practical to have a teleconference hearing when an interpreter was required for both the Respondent and his representative and adjourned the hearing and assigned a video-hearing in its place.
11. The Respondent submitted photographs in compliance with the Tribunal's Direction by email dated 10 June 2021.
12. The Applicant attempted to submit documents to the Tribunal by email dated 15 June 2021 and was advised these were in the wrong format. The Applicant advised the Tribunal administration that hard copies had been sent by post and was advised by email dated 30 August 2021 that there was no trace of these being received.
13. By email dated 27 August 2021 the Respondent's new representative Ms Claire Cochrane submitted further written representations to the Tribunal and requested that the hearing be converted to a CMD in light of the information provided.
14. The Tribunal considered the request and agreed to it. Due to the Applicant's non-availability the CMD was subsequently postponed and a further CMD assigned.

The Case Management Discussion

15. A CMD was held by teleconference on 18 October 2021. The Applicant did not attend nor was he represented. The Respondent did not attend but was represented by Ms Claire Cochrane of Govan Law Centre. The Tribunal being satisfied that the Applicant was aware of the date and time of the CMD determined to proceed in his absence.
16. The Tribunal sought to clarify the figures in Ms Cochrane's submission of 27 August. She confirmed that in fact the sum claimed should be £510.00 and not £530.00 as stated. Therefore, after deduction of the deposit paid from the deposit scheme to the Applicant the sum remaining amounted to £160.00.
17. Ms Cochrane submitted that the Applicant had failed to comply with the Tribunal's Direction of 10 June 202. Furthermore, he had failed to co-operate with the Tribunal to such an extent that it was not possible for the Tribunal to deal with the application justly and fairly. Ms Cochrane went on to say that despite the Applicant saying that he had submitted hard copies of the documents and evidence requested by the Tribunal in June it was now October and the Respondent still had not had sight of any such evidence.
18. Ms Cochrane referred the Tribunal to the overriding objective namely to deal with the proceedings justly and fairly.
19. The Tribunal sought to clarify the Respondent's position with regards to the deposit repaid to the Applicant and noted that the Respondent believed the Applicant had provided the scheme administrators with false contact details for the Respondent but that she was not instructed further in that regard.
20. Ms Cochrane submitted that in the absence of the Applicant and given his failure to co-operate with the Tribunal the application should be dismissed.
21. After a short adjournment to consider matters the Tribunal decided to dismiss the application for the reasons given below.

Reasons for Decision

22. Regulation 2. Of the First-tier Tribunal for Scotland (Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") states:-

The overriding objective

- 2.—(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.
- (2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

The Tribunal was concerned that despite being given several weeks' notice of the date and time of the CMD the Applicant had not attended nor given any explanation for his non-attendance. Given the written submissions by the Respondent's representative dated 27 August 2021 it was important that the issues raised were properly aired at the CMD in order to consider how these might impact on the evidence required should it be determined that it was necessary to proceed to a hearing.

23. Regulation 17 of the 2017 Regulations states:-

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

In the absence of the Applicant the Tribunal could not carry out its function in terms of Rule 17.(3). The Tribunal has to act in a manner which is proportionate and at the same time avoid delay. The Tribunal was concerned that the Applicant had made no attempt to communicate with the Tribunal administration his reason for non-attendance and in the absence of any such communication did not consider that it would be appropriate to allow further delay in the proceedings by adjourning to yet another CMD particularly when considering proportionality.

24. The Tribunal was also concerned that despite the Applicant being advised that the documents submitted in response to the Tribunal's Direction of 10 June 2021 were not in the correct format and also being advised that there was no trace of submissions being received by post no attempt had been made to submit the documents again in proper form.

25. Regulation 27 of the 2017 Regulations states:-

Dismissal of a party's case

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to—

(a) comply with an order which stated that failure by the applicant to comply with the order could lead to the dismissal of the proceedings or part of them; or

(b) co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly.

The Tribunal has carefully considered Ms Cochrane's submission on behalf of the Respondent. The Tribunal is also mindful of the overriding objective. Although the Applicant may have attempted to respond to the Direction of 10 June 2021 it must have been quite obvious that his obligations in this regard remained outstanding. Furthermore, by not attending the CMD and failing in advance to provide any reason for non-attendance the Applicant failed to cooperate with the Tribunal to such an extent that it could not deal with the proceedings justly and fairly and rendered the proceedings a waste of time at considerable expense to the public purse. In the circumstances the Tribunal considers that in all the circumstances and having taken account of the fact that the Applicant has secured the return of the Respondent's deposit from the scheme administrators in the sum of £350.00 dismisses the application in terms of Regulation 27.(2)(a) and (b) of the 2017 Regulations.

Decision

28. 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**18 October 2021
Date**