

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of Alan Strain, 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 27(2)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/EV/18/3061**

**Re: 45 Ashmark Avenue, New Cumnock, KA18 4EU ("the Property")**

**Parties:**

**Mr Sukdhel Lal ("the Applicant")**

**Mr David Dick ("the Respondent")**

**Hardy McPhail Solicitors ("Applicant's Representatives")**

**Tribunal Member:**

**Alan Strain (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 the Applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings justly and fairly within the meaning of Rule 27(2)(b) of the Procedural Rules.**

**Background**

1. The application was received by the Tribunal under Rule 66 on 14 November 2018. The application seeks recovery of possession/eviction on the grounds of termination of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988. The following documents were provided:
  - (i) Application received 14 November 2018;
  - (ii) AT5 date 14 August 2015;
  - (iii) Short Assured Tenancy dated 14 August 2015;

A.Strain

- (iv) Addendum to Short Assured Tenancy dated 11 April 2018;
  - (v) Section 11 Notice;
  - (vi) Sheriff Officer Certificate of Service of Section 33 and Notice to Quit;
  - (vii) Notice to Quit dated 9 August 2018; and
  - (viii) Section 33 Notice dated 6 August 2018.
2. On 6 December 2018 the application was considered by the Tribunal. By Letter from the Tribunal of the same date the Applicant's representatives were requested to provide (amongst others) the following information:
    - (a) Submissions on the validity of the Addendum, notice to quit and section 33 Notice.
  3. The Applicant's representatives were advised that if the information was not provided by 20 December 2018 then the application may be rejected.
  4. No response was received.
  5. The Tribunal wrote again to the Applicant's representatives on 25 January 2019 requesting the same information by 8 February 2019 failing which the application may be rejected.
  6. The Applicant's representatives responded by letter of 4 February 2019 which letter did not address the request for information from the Tribunal made on 6 December 2018 and 25 January 2019.
  7. The Tribunal wrote again on 20 February 2019 requesting the same information by 6 March 2019 failing which the application may be rejected. The Applicant's representatives responded by letter of 21 February 2019 asking what additional information was required.
  8. The Tribunal wrote to the Applicant's representatives on 18 March 2019 again setting out what information was required and gave the Applicant's representatives until 25 March 2019 to respond failing which the application may be rejected.
  9. No response was received so the Tribunal wrote again on 8 April 2019 to the Applicant's representatives requesting the same information and informed them that if the information was not provided by 22 April 2019 then the application may be rejected.
  10. No response was received.

### **Reasons for Decision**

11. The Tribunal considered the application in terms of Rule 27(2)(b) of the Procedural Rules. That Rule provides:-

**"Dismissal of a party's case** A. Strain  
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."*

12. In light of the Applicant's failure to respond to the Tribunal's request for further information the Tribunal found that the Applicant had failed to co-operate with the Tribunal to such an extent that it could not deal with the proceedings justly and fairly. The essential elements of Rule 27(2)(b) were made out.

13. The application is accordingly 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.**

A.Strain

\_\_\_\_\_  
**Legal Member/Chair**

\_\_\_\_\_  
**Date**

*8 May 2019*