



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 16 of the Housing (Scotland) Act 2014 (“2014 Act”)

Chamber Ref: FTS/HPC/CV/18/1193

Re: 69 Kingston Avenue, Edinburgh, EH16 5UH (“the Property”)

Parties:

Liberton Golf Club, c/o DJ Alexander, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Applicant”)

Mr Matthew Jaeger, formerly residing at 69 Kingston Avenue, Edinburgh, EH16 5UH and currently residing at an unknown address (“the Respondent”)

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/18/1193 took place at 10.00am on Thursday 27 September 2018 in room D25, George House, 126 George Street, Edinburgh EH2 4HH (“**the CMD**”). The Applicant was represented by David Gibb of DJ Alexander (“**the Applicant’s Representative**”). He was accompanied by Dean Paterson of DJ Alexander as an observer. The Respondent was neither present in person nor represented at the CMD. The clerk to the Tribunal was Linda O’Neill.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. The Applicant (through the Applicant’s Representative) made an application to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017**

Regulations”). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment of £2,020 (two thousand two hundred pounds sterling).
3. The application made by the Applicant's Representative on behalf of the Applicant was dated 15 May 2018 and was accompanied by documentation to support the application.
4. The application was accepted by the Tribunal on 30 May 2018.
5. However, on attempting to serve the notice confirming the date, time and place of that case management discussion on the Respondent, the sheriff officers (Hannah's) advised in their covering letter dated 20 July 2018 that “the premises appear to be currently empty and unoccupied”. However, their letter also enclosed certificate of execution of service confirming that the Respondent had been “duly served” on 16 July 2018.
6. In response to receipt of this information, Suzanne Tanner, the Legal Member appointed to preside over the case management discussion, issued a direction dated 15 August 2018. The direction to the Applicant was in the following terms:

“The Applicant and/or the Applicant's Representative is required to produce to the tribunal's administration no later than 23 August 2018:

1. The current address for the Respondent, given that the Property address which was supplied by the Applicant on the Application lodged on 15 May 2018 appeared to be empty and unoccupied when a Sheriff Officer attempted to effect service of the Application paperwork on 17 July 2018, and the tribunal's administration requires to notify the Respondent of acceptance of the Applicant's Application (in terms of Rule 9 of the 2017 Rules) and provide notice of the date, time and place of the postponed case management discussion (in accordance with Rule 17(2) of the 2017 Rules).”
7. No written response was provided by the Applicant or the Applicant's Representative to this direction.
8. The CMD was nonetheless scheduled and notified to the Applicant and, apparently (based on the information available to the Legal Member prior to the CMD), also to the Respondent. The covering letter dated 13 September 2018 from the sheriff officers (Walker Love), which enclosed a certificate of service confirming service on the Respondent, noted that there was “no reply at the time” of the sheriff officer's visit but “enquiries established that the respondent continues to reside at the address and the papers were deposited”.
9. Accordingly, on that basis, the CMD was allowed to proceed.

DISCUSSION AT THE CMD

10. In explaining the lack of a written response to the direction, the Applicant's Representative confirmed that he had spoken to someone within the Tribunal's administration team to advise that the Respondent had moved out of the Property, that tracing agents had been instructed to try to determine the current address of the Respondent but that, so far, the tracing agents had been unsuccessful in doing so. This information had not been provided to the Legal Member prior to the CMD.
11. When the CMD was scheduled, the Applicant's Representative noted that he had believed that the Tribunal must have separately established the current address of the Respondent. However, this was not the case. There was no suggestion made by the Applicant's Representative that this was the responsibility of the Tribunal. However, for the avoidance of any doubt, the Tribunal has no responsibility to trace a respondent or determine their current whereabouts. This is the sole responsibility of the relevant applicant.
12. The Applicant's Representative confirmed that the Respondent had given notice to terminate the tenancy and had removed from the Property but had failed to pay rent for the full period of the tenancy. The Applicant's Representative indicated that this may have been the Respondent "self-compensating" for maintenance issues, which the Applicant's Representative noted the Applicant had taken steps to address. The Applicant's Representative also noted that the Respondent had confirmed that he had posted the keys to the Property back to the Applicant's Representative but these were not received.

REASONS FOR DECISION

13. Given that it was known that the Respondent no longer resided at the Property but that the Respondent's current address was unknown, the Legal Member did not consider that it was appropriate to grant an order for payment and, in practical terms, that it would not be possible to enforce such an order even if granted.
14. This appeared to be accepted by the Applicant's Representative.

DECISION

15. Accordingly, the application with reference FTS/HPC/CV/18/1193 for an order for payment against the Respondent was refused.
16. The Legal Member confirmed that, should the (then) current address of the Respondent be determined in the future, this decision would not prevent the Applicant submitting a new application to the Tribunal, despite such a future application likely being in substantially similar terms to the application currently before the Tribunal with application reference FTS/HPC/CV/18/1193.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

Legal Member

27.9.18

Date