

Housing and Property Chamber

First-tier Tribunal for Scotland



**First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")**

**DECISION: Rule 27 of the First-tier Tribunal Housing and Property Chamber
(Procedure) Regulations 2017 ("the 2017 Rules")**

Chamber Ref: FTS/HPC/EV/20/0431

**Re: Property at 39 North Hamilton Street, Kilmarnock, KA1 2QL ("the
Property")**

Parties:

**Ms Gael Jamieson, 12 Ballochmyle Drive, Crookston, Glasgow, G53 7GN ("the
Applicant")**

**Rent Locally Lanarkshire, 42-46 Cadzow Street, Hamilton, ML3 6DS ("the
Applicant's Representative")**

**Miss Vari Telfer, current whereabouts unknown and Mr James Stephens, 39
North Hamilton Street, Kilmarnock, KA1 2QL ("the Respondents")**

Tribunal Members:

Ms. Susanne L. M. Tanner Q.C. (Legal Member)

DECISION

The tribunal dismissed the Application in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, because the Applicant failed to comply with an order which stated that failure by the Applicant to comply with the order could lead to dismissal of the proceedings or part of them; and failed to cooperate with the First-tier Tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

STATEMENT OF REASONS

1. Procedural Background

1.1. The Applicant's Representative made an application to the tribunal on 7 January 2020 in terms of Section 51 of the Private Housing

(Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).

- 1.2. The Applicant seeks the Respondents’ eviction from the Property in terms of Section 51 of the 2016 Act on what was stated in the Application to be Ground 8 of Schedule 3 to the 2016 Act, however, the specification of the ground refers to rent arrears.
- 1.3. The Applicant’s Representative lodged a number of documents with the Application.
- 1.4. The Application was accepted for determination by the tribunal. A Case Management Discussion (“CMD”) teleconference was fixed for 4 August 2020 at 1400h and the tribunal issued notification by letters of the date, time and place of Case Management Discussion (“CMD”). However, as noted as the Case Management Discussion which followed, there was no effective service on the First Respondent as the Applicant’s Representative had provided the First Respondent’s address as the Property, despite having been advised some time previously that the First Respondent had moved out of the Property (see further below). The Respondents were invited to make written representations in response to the Application. Both parties were advised that they were required to attend the CMD (subject to what is said above regarding the First Respondent). The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
- 1.5. Service on the Second Respondent of the Application paperwork and notice of the CMD was effected by Sheriff Officers. Service on the First Respondent by Sheriff Officers of the Application paperwork and notice of the CMD was not effected.
- 1.6. The Second Respondent contacted the tribunal’s administration before the CMD to advise that he required to obtain medical treatment and to obtain legal advice.
- 1.7. A CMD took place on 4 August 2020. Reference is made to the Notes on the CMD which were prepared by the legal member. The CMD was adjourned to a future date as no-one had attended the CMD; and because effective service had not been made on the First Respondent.

1.8. The tribunal issued Directions dated 19 August 2020 to the Applicant's Representative, in the following terms:

1. The Applicant's Representative is required to provide to the tribunal's administration no later than 27 August 2020:

a. Written confirmation of the date upon which the Second Respondent, Mr James Stephens notified the Applicant's Representative that the First Respondent, Miss Vari Telfer had left the Property;

b. A current address for the First Respondent, Miss Vari Telfer, if available, in order that the Application paperwork and notification of any case management discussion/hearing may be served on her by the tribunal's administration;

c. If no such address is available, any application which the Applicant's Representative wishes to make for Service by Advertisement on the First Respondent, if the address is not known; the forms and guidance in relation to which can be found on the Chamber's website: <https://www.housingandpropertychamber.scot/sites/default/files/hpc/SERVIC E%20BY%20ADVERTISEMENT%20REQUEST.pdf> ;

d. Documentary evidence of efforts to trace the First Respondent, as required to accompany any application for service by advertisement, such as a trace report from Sheriff Officers and/or any enquiries made with the Second Respondent and the responses thereto.

2. The Applicant's Representative is required to provide to the tribunal's administration no later than the 8 September 2020 at 1700h:

a. An updated statement of rent arrears for the Respondents and the Property showing the rent arrears at the time that the Notice to Leave was served; the rent arrears which will be outstanding as at the date of the Case Management Discussion on 16 September 2020 at 1400h.

3. All parties should note that the Case Management Discussion which is currently due to take place by teleconference on 16 September 2020 at 1400h may require to be postponed depending upon the outcome of the Applicant's Representative's response to order 1, and whether any application is made for Service by Advertisement, as there is a minimum period of time required for notification to parties of a Case Management Discussion. The Case Management Discussion will remain fixed meantime and the tribunal's administration will inform parties in due course if the Case Management Discussion requires to be postponed."

1.9. The Applicant's Representative failed to comply with the tribunal's Directions of 19 August 2020.

1.10. On 9 September 2020, the Applicant's Representative submitted an email in which a copy email from the First Respondent dated 26 June 2019 was provided stated that the First Respondent had moved out of the Property six months prior to that. No address was provided by the Applicant for the First Respondent. No Application was made for Service by Advertisement on

the First Respondent. No further information was provided. No request was made to amend the Application.

- 1.11. As a result of the Applicant's Representative's failure to comply with the tribunal's Directions, notification of the CMD could not take place.
- 1.12. A second CMD took place on 16 September 2020.
- 1.13. No parties or representatives attended the CMD teleconference due to the notification issue arising from the Applicant's failure to comply with the tribunal's Directions.
- 1.14. The tribunal chair decided to adjourn the CMD to a future date to be fixed; and to issue Directions which include notice to the Applicant in terms of Rule 27 of the 2017 Rules that the tribunal may dismiss the whole of the proceedings if the Applicant / her Representative fails to comply with the orders therein; or to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.
- 1.15. The Case Management Discussion teleconference was adjourned to a date to be notified to parties.
- 1.16. Further Directions were issued to the Applicants/Applicant's Representative dated 16 September 2020, which included notice in terms of Rule 27 of the 2017 Rules that the tribunal may dismiss the whole of the proceedings if the Applicant / her Representative fails to comply with the orders therein; or to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly. The Directions were in the following terms:

"1. The Applicant's Representative is required to provide to the tribunal's administration no later than 30 September 2020:

a. A current address for the First Respondent, Miss Vari Telfer, if available, in order that the Application paperwork and notification of any case management discussion/hearing may be served on her by the tribunal's administration;

b. If no such address is available, any application which the Applicant's Representative wishes to make for Service by Advertisement on the First Respondent, if the address is not known; the forms and guidance in relation to which can be found on the Chamber's website: <https://www.housingandpropertychamber.scot/sites/default/files/hpc/SERVIC E%20BY%20ADVERTISEM ENT%20REQUEST.pdf> ;

c. Documentary evidence of efforts to trace the First Respondent, as required to accompany any application for service by advertisement, such as a trace report from Sheriff Officers and/or any enquiries made with the Second Respondent and the responses thereto.

d. Any request to amend the Application, to change the Ground under which the Respondents' eviction from the Property is sought, given that it currently specifies Ground 8 and makes reference to rent arrears; whereas Ground 8 of Schedule 3 to the 2016 Act does not relate to rent arrears.

e. An updated statement of rent arrears for the Respondents and the Property showing the rent arrears at the time that the Notice to Leave was served; the rent arrears which will be outstanding as at the date of the Case Management Discussion on 16 September 2020 at 1400h.

2. All parties should note that the Case Management Discussion teleconference on 16 September 2020 was adjourned due to the Applicant's representative's failure to obtemper the previous directions of the tribunal, which resulted in a failure of notification to all parties. The Case Management Discussion was adjourned to a future date to be notified to parties. However, notification of an adjourned CMD is contingent upon the Applicant / Applicant's Representative complying with the above orders.

3. The Applicant and the Applicant's Representative are notified that the tribunal may dismiss the whole or part of the proceedings if the Applicant or the Applicant's Representative, acting on her behalf, fails to comply with the orders in this Direction; or fails to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly."

1.17. The Applicant's Representative failed to respond to or comply with the tribunal's Directions of 16 September 2020.

2. Application of relevant rules

2.1. Rule 27(b) of the 2017 Rules provides that the tribunal may dismiss the whole or part of the proceedings if the applicant has failed to 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 the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

2.2. The Applicant (through her Representative) has failed to 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; and the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly. The Applicant and/or her representative failed to comply with tribunal's Directions of 19 August 2020 and 16 September; and failed to attend the Case Management discussion on 4 August 2020 and the CMD on 16 September 2020 could not take place due to the Applicant's and her representative's failures to comply with the tribunal's Directions.

2.3. The tribunal therefore dismisses the Application in terms of Rule 27 of the 2017 Rules.

Appeals

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.

Ms Susanne L M Tanner QC
Legal Member and Chair

15 October 2020