



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 20216

Chamber Ref: FTS/HPC/EV/22/1461

Re: Property at 34 Windmill Court, Motherwell, ML1 1XD ("the Property")

Parties:

Mr Steven Cairns, 9 Rosegreen Crescent, Bellshill, ML4 1NT ("the Applicant")

Miss Dawn Farrell, 34 Windmill Court, Motherwell, ML1 1XD ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Applicant and the Respondent)

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

In this matter a Case Management Discussion ("CMD") was scheduled to take place by telephone conference on 25 August 2022 at 10.00am. Neither party attended. Neither party was represented.

The Tribunal left the conference line open until 10.10am but neither party joined.

Reasons for Decision

The Tribunal had regard to Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") headed "Hearing case in absence of a party".

Rule 29 states:-

"If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it."

Rule 24(1) and (2) headed "Hearings" states:-

- "(1) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a hearing (including any adjourned or postponed hearing) and any changes to the date, time and place of a hearing.*
- (2) The notice period for a hearing must be no less than 14 days from the date of receipt of the notice, unless the parties consent to a shorter period or there are urgent or exceptional circumstances."*

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to both the Applicant and the Respondent having received notice of the CMD and determined to proceed in the absence of the parties in terms of Rule 29.

The Tribunal also had regard to Rule 27 headed "Dismissal of a party's case and to Rule 27(2) in particular which states:-

- "(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."*

Whilst on the face of it from a review of the application papers, the Respondent appeared to have accrued arrears of rent due to the Applicant the Tribunal considered that the arrears could have been paid in full by the Respondent prior to the CMD such that no eviction order was required by the Applicant. The Tribunal could not therefore make any order in favour of the Applicant without the attendance of the Applicant or a representative on his behalf.

In the absence of the parties and the Applicant in particular the Tribunal could not deal with the application justly and fairly and therefore dismissed the application under Rule 27(2)(b) of the Rules.

Decision

The Tribunal dismissed the application.

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.

Gillian Buchanan

Legal Member/Chair

25 August 2022
Date