



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/21/1773

Re: Property at 19 Inneizwood Road, Kilwinning, KA13 7DU (“the Property”)

Parties:

Mr Brian Spiers, 107 Hunter Drive, Irvine, North Ayrshire, KA12 9BS (“Applicant”)

Miss Stephanie Campbell, 5 Highfield Street, Kilwinning, KA13 7BN (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

1. On 18 July 2021 the Applicant applied to the tribunal for an order for payment, claiming that the respondent had fallen into arrears of rental, and for sums allegedly due for repairs to the property after the lease between the parties ended.
2. This application has some procedural history. There have been two earlier case management discussions, and directions were issued to both parties to properly focus their positions and to produce documentary evidence. The applicant, in particular, was directed to produce a copy of the lease between the parties and to produce a reliable calculation of the sums he claims are due.
3. Neither party has responded to the directions issued by the tribunal

4. At an evidential hearing on 31 May 2022 the application was dismissed because neither party attended the evidential hearing. On 12 July 2022 the tribunal recalled the decision to dismiss the application and continued the case to a case management discussion.

Case Management Discussion

5. A case management discussion took place by telephone conference at 10.00am on 1 November 2022. Neither the applicant nor the respondent appeared nor were either of them represented. The hearing was delayed until 10.15am, but neither party joined the teleconference hearing.
6. No explanation is given for non attendance. We are satisfied that the parties have had timeous intimation of the time date and method of joining the teleconference hearing. Because of the procedural history of this case, and mindful of the overriding objective set out in Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, we consider the application and supporting documentary evidence in the absence of the parties
7. The application is flawed by unreliable documentary evidence and inconsistent statements from the applicant. The tribunal has already issued directions to both parties to produce the evidence required to support each of their competing positions. Neither party has responded to those directions.
8. Rule 2 of the 2017 Procedure Regulations requires the tribunal to deal with every application justly whilst avoiding delay. The applicant has had several opportunities to properly vouch his claim and pursue his application, but has not taken those opportunities.
9. Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the tribunal may dismiss an application if the applicant fails to cooperate with the tribunal. In the absence of reliable evidence, the only realistic course open to the tribunal is to dismiss the application because the applicant has (more than once) failed to cooperate with the tribunal.
10. The applicant fails to produce cogent, reliable, evidence. The inconsistencies in the application are unresolved.

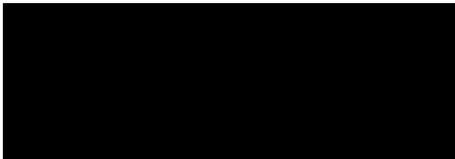
DECISION

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.



Legal Member

Date 1 November 2022