



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 27(b) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017**

**Chamber Ref: FTS/HPC/EV/19/0995**

**Re: Property at 14 Morrison Court, Stevenson, KA20 4JS (“the Property”)**

**Parties:**

**Azlan Properties Ltd, 132 Hayocks Road, Stevenston, KA20 4DR (“the Applicant”)**

**Mr Dylan Toole, 14 Morrison Court, Stevenson, KA20 4JS (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member)**

**Decision (in absence of the parties)**

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

- Background

This is an application for an order for eviction of the Respondent from the Property, which he occupies in terms of a private residential tenancy. It called for a case management discussion (‘CMD’) at 10am on 4 August 2020, by teleconference. Neither party phoned in to the teleconference. A further half an hour was allowed for the parties to phone in, and attempts were made by the Tribunal Clerk to contact the parties during that period, to no avail.

The Tribunal determined that the Applicant had failed to co-operate with it to such an extent that it was not possible to deal with the proceedings justly and fairly and that the application should therefore be dismissed.

- Reasons for Decision

1. This application was originally submitted on 1 April 2019. It has called for CMDs on three previous occasions, on 26 September 2019, 8 January and 21 February 2020. On each occasion, the Applicant has requested an adjournment to monitor the Respondent's payment of arrears and the extent to which he refrains from anti-social behaviour.
2. This continued suspension of a final determination raises an issue in regard to the overriding objective of the Tribunal to deal with the matter justly: especially the avoidance of delay. That has already been referred to by the Tribunal in its notes from the CMDs of 8 January and 21 February 2020. In particular, in the context of allowing a continuation for three months, the latter states, "[P]arties should be aware that that it is highly unlikely that a further continuation will be allowed in this matter, and that the Tribunal will require to reach a conclusion to these proceedings."
3. The matter has been further delayed by the lockdown due to the Covid-19 pandemic, meaning that that final, three-month continuation has in effect extended to almost five and a half months.
4. In advance of the CMD on 4 August 2020, the Tribunal directed the Applicant to confirm: "Whether it is now his intention to seek eviction of the Respondent in terms of the application and, if so, on what grounds?" The Applicant responded only by stating:

"Tenant has not made any attempt or arrangements to clear his arrears  
he needs to clarify his intentions on above matter  
  
also there has been one further incident regarding his behaviour" [sic].
5. Between 10am and 10:30am on 4 August 2020, the Tribunal Clerk attempted to contact the Applicant. He left a voicemail message for the Applicant warning him that if he failed to phone in to the CMD by 10:30am the Tribunal would have to consider dismissing his application. No response was received by that time.
6. In the circumstances, the Tribunal was faced with only three courses of action: to make an order for eviction on the basis of the papers; to adjourn the matter, either to a further CMD or to a hearing; or to dismiss the application.
7. The Tribunal considered that the Applicant had been given ample opportunity to request an order for eviction, either in response to the direction or at the CMD itself, but had not done so. The history of the case thus far and the reference to the Respondent clarifying his intentions in the reply to the direction did not indicate any particular wish on the part of the Applicant for an

order to be granted. Instead, they implied that the Applicant hoped to keep the matter pending before the Tribunal for long enough to persuade the Respondent to placate him. It is neither just nor fair for the Tribunal procedures to be used in such a manner.

8. The reply to the direction indicated that the underlying factual situation had changed, but did not give adequate detail as to the effect of these changes to allow the Tribunal to make sufficient findings in fact to support a decision. Neither would it have been possible to identify what issues required to be determined at any hearing that might be fixed. On this basis, it was also not possible for the Tribunal to deal with matter justly and fairly either by making a decision, or by fixing a hearing.
  9. The Tribunal therefore considered that the only option remaining to it was to dismiss the application. In exercising that option, the Tribunal took into consideration the prejudice to the Applicant in potentially having to re-raise the application; but considered that it was outweighed by the prejudice to the Respondent in further suspending a conclusion to the matter, particularly given the availability of the recall procedure.
- Decision

Application 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.**

N. Young

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**Legal Member/Chair**

04/08/2020

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**Date**