



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

Chamber Ref: FTS/HPC/PR/20/1084

Re: Property at 18 Cross Stone Place, Motherwell, ML1 1UE (“the Property”)

Parties:

Ms Mary Wambui, 18 Cross Stone Place, Motherwell, ML1 1UE (“the Applicant”)

Lesley Hunter, Apartment 306, J5 Building, Al Sufouh, Dubai, United Arab Emirates (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent and Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed under Rule 27.

- Background

Following a Case management Discussion (CMD) on 10 August 2020 at which the Respondent appeared but the Applicant did not, the matter was continued to a further CMD and a Direction was issued to the Applicant to provide further information in relation to and to support her claim.

In terms of that Direction, the documentation sought by the Direction should have been lodged with the Tribunal no later than 30 September 2020. In the accompanying note to the Direction, the Applicant was warned that, should she fail to comply with the Direction and provide the further detail sought, then the Tribunal may consider that failure (and any failure to attend or be represented at the continued CMD) as a failure in terms of Rule 27 of the of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) and may lead to dismissal of her application.

The Applicant failed to comply with that Direction and no further documentation, as requested by the Direction, was lodged with the Tribunal.

- The Continued Case Management Discussion

A continued CMD was set for 9 October 2020. Neither the Applicant nor the Respondent appeared or were represented. The Tribunal therefore considered the application and the Applicant's failure to comply with the Direction issued by the Tribunal and resolved to dismiss the application in terms of Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended).

- Reasons for Decision

The Applicant's failure to attend either CMD or to provide the information requested by the Direction was a failure to comply with that Direction for which she had been warned could lead to dismissal of her case. Separately, such failures were also a failure to cooperate with the Tribunal meaning that the Tribunal could not deal with the proceedings justly and fairly.

Based on the application and written response as well as the information provided by both the Applicant and the Respondent to date, the Tribunal could not say that they would have likely found in favour of the Applicant. The Applicant seeks to recover what is claimed is overpaid rent. She claims that she paid £750 per month from June 2017 of entry against a contractual rate of £700 per month. She has lodged bank statements to support that proposition showing payments at the rate of £750 per month, but only from February 2018. In response, the Respondent has provided information showing that she received the sum of £630 (being £700 less commission) per month from her letting agent up and until around February 2018, when she thereafter received £675 (being £750 less commission). The Respondent also provided email correspondence dated 25 February 2020 from her letting agent indicating that a contractual rent increase was implemented to take effect from February 2018. Clause 3 of the lease between the parties (lodged by the Applicant) allows contractual rent increases to be implemented. The Respondent also indicated that no payments of rent had been made between February and April 2020 and payments of £700 were made in May and June 2020.

There was therefore no admission of overpayments nor was there any documentation lodged that would allow the Tribunal to establish the level of any such overpayments. Ultimately it is for the Applicant to prove that, not only that she is entitled to repayment of overpaid rent, but also the amount that she would be entitled to.

- Decision

The Tribunal resolved to dismiss the application in terms of Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended).

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.

Rory Cowan

Legal Member/Chair

**9 October 2020
Date**