



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 2016

Chamber Ref: FTS/HPC/EV/21/2489

Re: Property at 10 Macduff, North Barr, Erskine, PA8 6EL (“the Property”)

Parties:

Mrs Lynette Earl, 15 Buckie, Erskine, PA8 6EE (“the Applicant”)

Miss Rachael Keys, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatriidge (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Applicant and Respondent)

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 11.10.21 and after correspondence with the First-tier Tribunal for Scotland Housing and Property Chamber (the tribunal) and lodging of further documents accepted on 15.2.22.
2. The Applicant ultimately provided the following documents: a copy Private Residential Tenancy Agreement between the parties over the property commencing 17.7.20, S 33 Notice, Notice to Leave dated 1.3.21, email to state this was hand delivered, Tenancy Reference, S 11 Notice and email serving same on 25.1.22. The case documents are referred to for their terms and held to be incorporated herein.
3. A Case Management Discussion (CMD) was scheduled for 25.4.22 at 10 am and both parties were notified of the date, time and joining instructions for the CMD as follows: email to Applicant 7.3.22 and service by Sheriff Officers on Respondent on 8.3.22.
4. On 1.4.22 the Applicant wrote to the tribunal stating: "The tenant has now left the property so eviction not needed".
5. No representations had been received from the Respondent.
6. Neither party had requested a postponement or change of date.

7. On 4.4.22 and 6.4.22 the tribunal wrote to the Applicant asking her to confirm that the application was withdrawn. There was no reply.
8. At the CMD on 25.4.22 neither party attended.
9. The application was made on ground 1 of schedule 3 of the Act. This is a discretionary ground for eviction. The tribunal has no up to date information on the situation of the Applicant and no documentary evidence was provided to show that the ground was met, although the Applicant had stated in several emails she would be homeless if she did not gain access to the property. No information regarding the Respondent's current circumstances were available. In the circumstances the tribunal did not consider it was in a position to make an order.
10. Given the information provided in the email of 1.4.22 it appears that the Applicant is no longer wishing to pursue the application.

B Reasons for Decision

Rule 27 of the procedural rules provides:

Dismissal of a party's case

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(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.

1. The Applicant did not attend the CMD and was not represented. She had not replied to the emails of the tribunal of 4.4.22 and 6.4.22.
2. Without further up to date information from the Applicant the Tribunal is not able to decide the case justly and fairly.
3. The Applicant had not answered the recent emails from the tribunal. She did not attend the CMD despite having received the necessary notification. In the circumstances the Tribunal unanimously considered that the Applicant had failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal could not deal with the application justly and fairly.
4. In light of that the Tribunal dismisses the application in terms of Rule 27 (2) of the procedural rules.

Decision:

The application is dismissed in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

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.

**Petra Hennig McFatridge
Legal Member/Chair**

**25.4.22
Date**