



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 27 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedural Rules 2017 as amended

Chamber Ref: FTS/HPC/PR/20/1059

Re: Property at 18 CROSS STONE PLACE, MOTHERWELL, ML11UE (“the Property”)

Parties:

MS MARY WAMBUI, 18 CROSS STONE PLACE, MOTHERWELL, ML11UE (“the Applicant”)

MS LESLEY HUNTER, 20 CROSS STONE PLACE, MOTHERWELL, ML11UE (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application

Background

- 1 By application dated 16th April 2020 the Applicant sought an order from the Tribunal against the Respondent under the Tenancy Deposit Scheme (Scotland) Regulations 2011 as a result of the Respondent's alleged failure to lodge her tenancy deposit with an approved tenancy deposit scheme within the statutory timescales.
- 2 The Respondent submitted written representations to the Tribunal dated 11 August 2020 in response to the application. In summary, the Respondent explained that she had experienced issues with a previous managing agent and recent delays in lodging the deposit with a scheme had been a result of the Applicant's failure to provide necessary information.

The Case Management Discussions

- 3 The first Case Management Discussion took place on 19 August 2020. The Respondent was in attendance. The Applicant did not attend. The Tribunal determined that there was insufficient information to determine the application and therefore issued a Direction in the following terms:-

“The Applicant is required to provide:

1. *Copies of all emails or other written communications between the applicant and the respondent from June 2019 to April 2020 showing the information that was provided by the applicant to the respondent to allow the respondent to set up a tenancy deposit scheme in the name of the applicant.”*

The Tribunal noted that any failure on the part of the Applicant to provide the information and/or attend the next Case Management Discussion may result in the matter being determined in her absence.

- 4 The second Case Management Discussion took place on 30 September 2020. The Respondent was in attendance. The Applicant did not attend. The Tribunal noted that the Applicant had failed to respond to the Direction issued. She had been given notice of the adjourned Case Management Discussion together with details on how to join the conference call. The Tribunal therefore considered it could proceed to determine the application in her absence, on the basis that she had been provided with ample opportunity to participate in the proceedings.

Reasons for Decision

- 5 The Tribunal considered the provisions of Rule 27 of the Procedural Rules which states:-

“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.

- 6 In this case, the Applicant had failed to attend the first Case Management Discussion. The Tribunal had subsequently issued the formal Direction requiring her to provide certain information which she had failed to comply with. She had then failed to attend the second Case Management Discussion. It was impossible for the Tribunal to give proper consideration to the matter before it in the absence of engagement from the Applicant. Her input would be crucial in terms of assessing the circumstances of any alleged breach of the deposit

regulations and forming a view on what sanction would be appropriate, if such a determination was deemed to be required. The Tribunal considered it could not therefore deal with the proceedings justly and fairly in her absence.

- 7 The Tribunal was not minded to allow any further adjournment of the proceedings, noting that the Respondent had already been present on two occasions before the Tribunal in the Applicant's absence and it would be unfair to expect her to attend a third time when there was no indication of the Applicant's intentions. The Applicant's apparent lack of the cooperation to date was a particular concern in this regard.
- 8 Taking all of the above matters into account, the Tribunal therefore determined to dismiss the application under Rule 27(2)(c) of the Procedural Rules.

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.

Ruth O'Hare

Legal Member/Chair

30th September 2020
Date