



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Regulation 10 of The Tenancy Deposit
Schemes (Scotland) Regulations**

Reference number: FTS/HPC/PR/23/1725

Re: Property at Flat 1/1, 18 Nithsdale Drive, Glasgow, G41 2PN (“the Property”)

The Parties:

Ms Erika Silverman, 3/2, 25 Bedford Street, Glasgow, G5 9RE (“the Applicant”)

**Miss Rachel Wright, 1024 Maryhill Road, Glasgow, G20 9TE (“the
Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision

The application is dismissed.

A: Background

This is an application under Rule 103 of the Procedural Rules and Regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (the Regulations). The application had been received by the Tribunal on 23 May 2023 and accepted on 13 June 2023.

The following documents were lodged with the application:

1. Tenancy agreement between the parties commencing 22 June 2021.
2. Receipt for deposit payment of £750 dated 17 June 2021.
3. Email correspondence between the Applicant and the Letting Agent regarding tenancy end and repayment of deposit between 14 April and 23 May 2023
4. Confirmation of all three deposit schemes that the deposit was not lodged.

On 5 July 2023 Sheriff Officers attempted service of the application and accompanying papers on the Respondent at the address provided by the Applicant. Sheriff Officers reported that this was the address of the Letting Agents Rannoch Property. As the Letting Agent did not disclose the Respondent's address but stated they have a fully managed contract with the Respondent a copy of the documents was left at their offices.

The Tribunal decided not to cancel the Case Management Discussion (CMD) on 11 August 2023 as there was a possibility the Respondent would receive the documents and attend or be represented.

No further correspondence was received from either party prior to the CMD.

B: The CMD on 11 August 2023:

Only the Applicant joined the teleconference. As there was not representation for the Respondent and the Tribunal cannot be certain that the Respondent had received the notification and application documents.

Under the circumstances the CMD could not proceed. This was explained to the Applicant. The Applicant asked if the matter could proceed against the Letting Agent and was advised by the Legal Member that this was not possible under the Regulations as an application can only be made against the landlord.

C: Further Procedure:

After the CMD on 11 August 2023 the Tribunal directed the Applicant to either provide the proper address of the Respondent or to apply for service by advertisement providing a negative trace report from Sheriff Officers or a tracing agent. Either action had to be taken by 11 October 2023. No further correspondence has been received by the Applicant.

E: Reasons for Decision

Relevant legislation: rule 27 of the Procedural Rules:

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 had been advised in terms of Rule 27 (2) (a) that failure to either apply for service by Advertisement or production of the proper address of the Respondent could lead to the dismissal of the case. The Applicant had been given ample time to either establish the proper address or to make an appropriate application for service by Advertisement. The Applicant did neither.

2. The Applicant has not been in contact with the Tribunal prior to or on the date the time limit for the direction made on 11 August 2023 expired. The Applicant has not co-operated with the First-Tier Tribunal to such an extent that the First-Tier Tribunal cannot deal with the proceedings justly and fairly. The Applicant did not contact the Tribunal to ask for further time and simply allowed the deadline for production of further information to expire. She has not shown that she made any attempt to obtain the Respondent's address. It is the responsibility of the Applicant to provide the proper address of a Respondent. She has not withdrawn the application either. The Tribunal cannot allow cases to remain registered without the possibility of a resolution and without giving the Respondent fair notice of the proceedings. Because of this the Tribunal provided clear instructions for the further procedure in this case, which were not complied with by the Applicant and in which the Applicant did not engage.
3. The Applicant did not provide the proper address of the Respondent at any point of the proceedings and did not engage with the process of identifying the proper address or allowing for appropriate service of the application even after the direction to do so was made and the Applicant was advised of the potential consequences of not providing the required information.
4. The application is thus dismissed in terms of rule 27 of the Procedure Rules due to failure to provide the information requested in the direction of the Tribunal and due to lack of further engagement of the Applicant in the process.

F: DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) dismisses the application in terms of rule 27 of the Procedure 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.

Legal Member/Chair

Date 7 November 2023