

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/CV/23/1280

Re: Property at 35 Avon House, Hamilton, ML3 0BL (“the Property”)

Parties:

Muirhouse Properties Ltd, 1 Millheugh Brae, Larkhall, ML9 1AS (“the Applicant”)

Mr Arthur Bennie, 9 Kittymuir Place, Larkhall, ML9 1FR (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant and the Respondent)

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

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £1651.24 in terms of s16 of the Housing (Scotland) Act 2014.
2. On 9th June 2023, Claire McCrossan, Money Adviser, Money Matters, emailed the Housing and Property Chamber advising that the Respondent was applying for bankruptcy in the next few weeks. She asked for a postponement to allow for the bankruptcy to be processed.
3. On 19th June 2023, the Applicant’s representative asked for a postponement as there would not be a member of staff free to attend due to the small size of the business. The case was postponed.

4. On 21st June 2023, the Respondent's representative emailed to advise that the Respondent was to be made bankrupt the following week.
5. On 3rd July 2023, the Respondent's representative emailed to advise that the Respondent was made an award of sequestration on 3rd July 2023. The level of debt was listed as £12595.88.
6. On 21st July 2023, the Applicant's representative emailed to advise that the Applicant did not wish to withdraw the application as the bankruptcy will only effect enforcement.
7. On 15th August 2023, all parties were written to with the date for the Case Management Discussion ("CMD") of 18th September 2023 at 10am by teleconferencing.
8. On 1st September 2023, the Respondent's representative emailed the Housing and Property Chamber to say that neither she nor the Respondent would be present at the CMD on 18th September 2023.

Case Management Discussion

9. A CMD was held 18th September 2023 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Cheryl Young, Director ELT Letting Ltd. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. Ms Young said that the Respondent left the Property on 11th April 2023. There have been no payments. The Tribunal queried if the Applicant had heard from the Accountant In Bankruptcy. Ms Young said that the Applicant has taken advice that an order will last for 20 years while the bankruptcy will only last for 6 years. The Tribunal was not clear what the Ms Young was suggesting. Ms Young is of the opinion that the Applicant could wait for the bankruptcy to end then enforce the Order. The Tribunal was concerned that given that information that the Account In Bankruptcy should be notified of the CMD as they have an interest in this case. The Tribunal will continue this case to allow the Accountant In Bankruptcy to be notified. Ms Young should find out if the debt has been caught by the bankruptcy and what the Applicant has to do thereafter. She should find out if an order is actually required. If it is not required the Applicant will need to decide if an order is necessary or not and withdraw the application if it is not necessary. If the Applicant does not know then they should take legal advice on the matter. Ms Young said that she did not know. She had spoken to the Scottish Association of Landlords but did not have information on this point. The application was continued to a further CMD to determine if the amount sought has been caught by the sequestration and if it remains necessary for an order to be granted or not. The Account In Bankruptcy was to be notified as they are an interested party.

Case Management Discussion

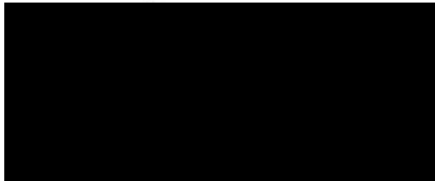
10. A CMD was held on 18th December 2023 at 10am by teleconferencing. Neither the Applicant nor the Respondent were present or represented. There was no explanation why the Applicant, in particular, was not present or represented. By 10.05am neither party had called in to the CMD.
11. The Tribunal dismissed the case as it was not clear that the Applicant wished to rely on the matters within the case.

Decision

12. The application was dismissed as it was not clear that the Applicant wished to rely on the case proceeding.

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

18th December 2023

Date