

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/23/1472

Re: Property at 6/3 South Clerk Street, Newington, Edinburgh, EH8 9JE (“the Property”)

Parties:

Mr Zach Evans, Mr Jack McGillivray, Mr Matthew Groves, Miss Olivia Lee, Miss Esther Keyworth, 6/3 South Clerk Street, Newington, Edinburgh, EH8 9JE (“the Applicants”)

Maison Plus Limited, 1 and 2 The Barn Oldwick, West Stoke Road, Chichester West Sussex, England, PO18 9AA (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Applicants)

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

Background

1. By application dated 6 May 2023 the Applicants’ representative Mr Zach Evans applied to the Tribunal under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”). The Applicants’ representative submitted a copy of the tenancy agreement, proof of payment of a deposit and confirmation of the date of termination of the tenancy in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicants’ representative, a legal member of the Tribunal by Notice of Acceptance dated 14 June 2023 accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Process Servers on 23 June 2023.
4. By email dated 11 July 2023 the Respondent's representative, Mrs Elaine Waterland submitted written representations to the Tribunal.
5. A CMD was held by teleconference on 3 August 2023. The Applicants were represented by Mr Zach Evans. The Respondent was represented by Mrs Elaine Waterland. After hearing from the parties' representatives, the Tribunal adjourned the CMD to a hearing. Reference is made to the Case Management discussion note issued by the Tribunal and dated 3 August 2023.
6. The Applicant's representative submitted copies of emails between himself and Iain Waterland during the CMD.
7. By email dated 7 November 2023 the Respondent's representative submitted further written representations to the Tribunal.

The Hearing

8. A hearing was held by teleconference on 14 November 2023. The Respondent was represented by Mrs Elaine Waterland. The Applicants did not attend nor were they represented. The Tribunal delayed the commencement of the hearing for ten minutes and asked the Tribunal Clerk to try to contact the Applicant's representative, Mr Zach Evans by telephone. The call to Mr Evans went to voicemail and the clerk left a message for Mr Evans reminding him of the hearing and providing the dial-in details.
9. The Tribunal ascertained from the clerk that Mr Evans had been sent intimation of the hearing by email on 10 October 2023. The Tribunal was satisfied that proper intimation of the hearing had been given and that no communication had been received from the Applicants or their representative requesting a postponement.
10. The Tribunal explained to the Respondent's representative that it could not hear the application in the absence of the Applicants or their representative and the Respondent's representative asked the Tribunal to dismiss the application. She also submitted that there was no merit in the application.

Reasons for Decision

11. The Tribunal could not determine the application in the absence of the Applicants or their representative. It would not be appropriate to make a decision simply on the basis of the Applicants' written submissions. The Tribunal considered whether in the circumstances it would be appropriate to adjourn the hearing in order to allow the Applicants a further opportunity to attend and present their case. However as the Tribunal was satisfied that proper intimation of the date, time and dial-in procedure had been sent to the Applicant's representative and the Tribunal Clerk had attempted to contact him

the Tribunal was satisfied that the application should be dismissed in terms of Rule 27(2)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as the Applicants had failed to co-operate with the Tribunal to such an extent that the Tribunal could not deal with the proceedings justly and fairly.

12. In the circumstances the Tribunal did not require to consider the merits of the application.

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.

**Graham Harding
Legal Member/Chair**

**14 November 2023
Date**