

Housing and Property Chamber

First-tier Tribunal for Scotland



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Statement of Decision by the Chamber President under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedure Rules”)

In connection with

Case reference FTS/HPC/CV/23/4310

Parties

Dr Allan Beveridge (Applicant)

Rannoch Property (Respondent)

0/2 55 Avenuepark Street, Glasgow, G20 8LN (House)

Background

1. On 1 December 2023 the Tribunal received an application from the Applicant made in terms of Rule 111 of the Procedure Rules. The Applicant seeks to obtain a payment order from the Tribunal to allow enforcement of the terms of a Letting Agent Enforcement Order (LAEO) issued by the Tribunal on 1 June 2023.
2. The LAEO required the Respondent to make a written apology and pay the sum of £1,296 to the Applicant within two weeks of the order. The LAEO was issued to the Respondent on 30 May 2023.
3. After expiry of the period for compliance stated within the LAEO, the Tribunal considered compliance with the LAEO in terms of section 50(1) of the Housing (Scotland) Act 2014 (‘the Act’).
4. The Tribunal provided parties with the opportunity to make representations on compliance with the order. The Applicant indicated that he had received neither payment of the sum of £1,296 in the order nor an apology from the Respondent.

Having engaged in the tribunal proceedings before issue of the LAEO, the Respondent failed to respond and make representations or provide a reason for non-compliance with the LAEO. The Tribunal made a decision on 12 August 2023 that the LAEO has not been complied with. The failure to comply decision was notified to the Scottish Ministers, in terms of section 50(2) of the Act. The decision on failure to comply was issued to the parties on 12 September 2023. The Respondent responded on 14 September 2023 and asked for initiation of a payment plan for the sum due in terms of the LAEO. The Appellant rejected this option. No request for review or permission to appeal has been lodged in relation to the decision dated 12 August 2023.

Decision

The President considered the application in terms of Rule 8 of the Procedure Rules. That Rule provides as follows:

Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

The Chamber President rejects the application received as she considers that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected in terms of ground Rule 8(c) on the basis that the matter has already been determined by the Tribunal i.e. it is *res judicata*, as the Applicant is seeking an order for payment when a Tribunal order has already been issued by the

Tribunal requiring payment of the sum of £1,296 and the only issue outstanding is one of enforcement of that order. There are sound reasons why a Tribunal should not rehear a case when a final determination has been reached which deals with the subject matter at issue between the same parties. There are a number of requirements which have to be considered before a plea of *res judicata* can be satisfied. The requirements are detailed in *MacPhail's Sheriff Court Practice* 4th edition Paragraphs 2.128 – 2.133. The requirements to be satisfied are (1) that there has been prior determination by a court of competent jurisdiction; (2) that the decree in the previous action is pronounced in *foro contentioso* (i.e. in a forum of litigation where both parties have had a chance to argue their points), without fraud or collusion; (3) the subject matter of the two cases must be the same; (4) the *media concludendi* (i.e. the procedure of reaching a conclusion) in the two cases must be the same; and (5) the parties in both cases are the same.

I am satisfied that the five requirements for concluding *res judicata* applies have been established. I consider that there is legislative provision already in existence providing for enforcement by a sheriff officer of an LAEO issued by a Tribunal where there has been a Tribunal decision that there has been a failure to comply with an LAEO. This provision for enforcement is contained in Rule 41 of the Procedure Rules.

Rule 41 of the Procedure Rules states

41.—(1) An order in pursuance of a decision of the First-tier Tribunal, or a copy of such an order certified by the First-tier Tribunal, may be enforced as if it were an extract registered decree bearing a warrant for execution issued by the sheriff court.

(2) An order cannot be enforced under paragraph (1) until the expiry of the period within which an application may be made for permission to appeal a decision of the First-tier Tribunal—

(a) under regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, or

(b) as determined by the First-tier Tribunal under regulation 2(2) of those Regulations”.

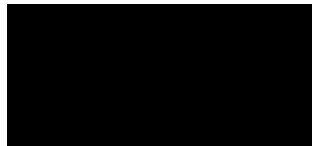
Given that the LAEO is an order of the Tribunal made in pursuance of a Tribunal decision and that a failure to comply with the LAEO has been established to the satisfaction of a Tribunal and such failure to comply decision has not been the subject of a request for permission to appeal either to the First-tier Tribunal or the Upper Tribunal, Rule 41(1) would allow the payment order in an LAEO in such circumstances to be certified and treated as an extract registered decree. The only

procedure which must be followed is for the appropriate certification bearing a warrant for execution be appended to the LAEO. This can be undertaken by a Tribunal judge without further legal process. Accordingly, I am issuing a certified LAEO bearing a warrant for execution of the order for payment of £1,296 with this rejection decision.

The Appellant also seeks to enforce the obtaining of an apology from the Respondent. However, there is no legal mechanism to enforce such a requirement and an application made under Rule 111 will not achieve such a result and has no possibility of success.

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.



Mrs Aileen Devanny
Chamber President
12 January 2024