



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 regarding an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/2539

Re: Property at Flat 12 8 Ravenscraig Drive, Glasgow, G53 6LH (“the Property”)

Parties:

Siberite Mortgages Limited, The Pavilions, Bridgwater Road, Bristol United Kingdom, BS13 8AE (“the Applicant”)

Miss Sisasenkosi Mswela, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig McFatridge (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Applicant and Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is dismissed under Rule 27 of schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”).

Reasons for Decision

Background

1. This decision concerns an application under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
2. On 28 July 2023 the Applicant made an application to the First Tier Tribunal, Housing and Property Chamber (the Tribunal), under Rule 109 of the Rules of Procedure. The Applicant was represented by TLT LLP. The application was directed against the

Respondent. The application was made on ground 2 of schedule 3 of the Act.

3. A Case Management Discussion (CMD) was initially scheduled for 24 October 2023. Sheriff Officers attempted to serve the case papers on the Respondent but advised the Tribunal that on attending at the property were unable to serve the papers on the Respondent. The Applicant's representative was advised of this and the CMD was cancelled and then re-scheduled for 16 January 2024.
4. The Applicant's representative was advised of the new date and joining instructions for the CMD on 22 November 2023. Service on the Respondent was carried out by advertisement.
5. The Applicant's representative had received the 14 days notice period required in Rule 24 (2) of the Rules. Neither party attended. Neither party contacted the Tribunal to advise of the reason for not attending the hearing.

Decision

6. In these circumstances, the Tribunal turned to the Procedure Regulations and had regard, in particular, to Rules 2 and 27.
7. Rule 2 ("The Overriding Objective") states that: "(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly." The task of the Tribunal was to decide, in light of the overriding objective, how to proceed in this case.
8. The Tribunal considered first whether it may be appropriate to adjourn the proceedings to another date. However, neither party had requested an adjournment. There was no indication that an adjournment would achieve a different outcome.
9. Rule 27 states: "(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."
10. The Tribunal finds that the Applicant, and his representative, have failed to co-operate with the Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly. They did not participate in the CMD despite having been given the required notification. There was no explanation for the failure to participate in the teleconference hearing.

11. The Tribunal cannot deal with the proceedings fairly and justly without sufficient information to make a determination regarding the issues raised in a case. In this case the Tribunal would have required to obtain further information from the Applicant for example regarding the fact of the failed service, which indicated that the Respondent may no longer reside at the property but that it may be occupied by another person and also that form BB had not been provided with the application as required in rule 109 (b) (iv) of the Rules of Procedure and no explanation having been given why this was not provided and whether it had ever been served on the occupier.
12. For these reasons, the Tribunal dismissed the application under rule 27 of the Procedure Rules.
13. The decision of the Tribunal was unanimous.

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.

Petra Hennig McFatridge

16 January 2024

Legal Member/Chair

Date