



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0307**

**Re: Property at First Floor Left, 33 Combie Street, Oban, Argyll, PA34 4HS (“the Property”)**

**Parties:**

**Miss Kirsteen Lawrie, 9 Stadium Road, Inverness, IV1 1FF (“the Applicant”)**

**Mr Ian Robert Brown, 34 Rhuvall Road, Oban, PA34 4BT (“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. An application was received by the Housing and Property Chamber which was lodged by the Applicant dated 28<sup>th</sup> April 2023. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. A Case Management Discussion (“CMD”) was held on 22<sup>nd</sup> August 2023. Ms Rachel Thomson, Senior Solicitor, Friends Legal Solicitors appeared on behalf of the Applicant. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD. At the CMD it was raised by the Chair that a search had been carried out by the Housing and Property Chamber, shortly after the application had been lodged, which did not show the Applicant as the owner of the Property. It had referenced West Highland Housing Association Limited as the last purchaser of the Property. The Applicant was not listed on the title

deeds. The Tribunal required to be satisfied that the Applicant is the heritable proprietor of the Property. The Tribunal also said that the Applicant appeared to have recovered the deposit paid by the Respondent. It was not clear from the rent statement provided that this had been offset against the arrears balance. Clarification was needed on this point. The CMD was adjourned for the Applicant's representative to liaise with the Applicant with regard to those points and for additional details be produced.

3. On 12<sup>th</sup> October 2023 all parties were written to with the date for the Case Management Discussion ("CMD") of 15<sup>th</sup> November 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 21<sup>st</sup> November 2023.

#### The Case Management Discussion

4. A CMD was held 15<sup>th</sup> November 2023 at 2pm by teleconferencing. The Applicant was represented by Ms Brogan Varney, Trainee Solicitor, Friends Legal Solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD. The Tribunal noted the reasons why the CMD was continued from 22<sup>nd</sup> August 2023 and asked why there has not been a submission to address these points. Ms Varney assured the Tribunal that the Applicant was the owner of the Property. She was not able to substantiate that with title deeds. Documentation had been sent to the Housing and Property Chamber. This has not been forwarded to the Tribunal due to the close proximity of it being lodged to the CMD. Ms Varney said that it was documentation regarding the sale of the Property. She noted that the Property is now owned by a third party. Ms Varney was not able to explain why that sale was also not on the title deeds obtained by the Housing and Property Chamber in January 2023. She said that the sale to the third party was in 2021. The Tribunal asked for clarification on that date as the rent statement lodged is up to 22<sup>nd</sup> April 2021. It would be assumed that is the date that the Applicant no longer owned the Property as she would not be entitled to rent arrears after that point. Ms Varney will clarify that point. An evidenced explanation of what has happened to the deposit. If it has been returned to the Applicant then this must be able to be shown on a rent account. This will give the Tribunal an exact figure that could potentially be awarded. As these points were raised at the last CMD and no information was provided, the Tribunal will issue a direction which it will expect to be complied which will give this information. If this information cannot be provided the Applicant should discuss the position with her solicitor as to whether she wishes to proceed with the application and whether the application has any merits to proceed on. Currently there is insufficient evidence to show that the Applicant has owned the Property or that the amount claimed is the correct amount given that the deposit has been returned to the Applicant. The Tribunal noted that it can dismiss an application if it does not consider that there are merits to proceed. The Tribunal continued the case to allow Applicant to provide the information required. The CMD was adjourned to a further date to allow the Applicant to provide the information specified in the direction.

5. On 15<sup>th</sup> November 2023 the Applicant's solicitor emailed the Housing and Property Chamber lodging further evidence in the form of solicitor's letters by the Applicant's conveyancing solicitor. This was not received by the Tribunal until after the CMD.
6. On 16<sup>th</sup> January 2024 all parties were written to with the date for the Case Management Discussion ("CMD") of 4<sup>th</sup> March 2024 at 10am by teleconferencing.

#### The continued Case Management Decision

7. A CMD was held 4<sup>th</sup> March 2024 at 10am by teleconferencing. The Applicant was represented by Ms Brogan Varney, Trainee Solicitor, Friends Legal Solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD.
8. Ms Varney said that she has not been able to provide any further information. The Applicant has been communicating with her but not provided the information which has been requested by the Tribunal. She has informed the Applicant in explicit terms that this needs to be provided. She has given the Applicant a deadline to provide more information or she will withdraw from acting. This time period is not yet over. Ms Varney motioned for a short continuation to allow that time to lapse. Ms Varney has not contacted the solicitor who sold the Property to determine if they have copies of the title deeds or Registers of Scotland. She will undertake investigations into these points. The Tribunal was content to continue the CMD once more. The CMD will be listed at the next available date.
9. The Tribunal said that it cannot grant any order without the correct information. It needs to know:-
  - a. Does the Applicant continue to hold the deposit for the Respondent or has it transferred to the new owner?
  - b. If she has the deposit has she removed this from the outstanding total which she is seeking? A rent account should be provided to illustrate this. This has been asked for in the direction and requires to be provided.
  - c. Has there been any contact from the Respondent in terms of payment?
  - d. What has the Applicant been told by Registers of Scotland in terms of the title deeds?
  - e. Does the Applicant's conveyancing solicitor have a copy of the title deeds or information on how the sale has been able to proceed without them?
10. **The Tribunal must have the information regarding the Applicant's ownership of the Property and for what period it was owned. The Tribunal noted that this is the third time that the CMD has had to be continued. If the information is not provided by the next CMD then it is very likely that the application will be refused. The information requested must be provided.**

### Outcome of the continued CMD

- 11. The CMD was adjourned to a further date to allow the Applicant to provide the information specified in the direction dated 15<sup>th</sup> November 2023 and referenced to above.**

### The further continued Case Management Discussion

12. A CMD was held on 9<sup>th</sup> July 2024 at 10am by teleconferencing. Neither the Applicant nor the Respondent were present or represented. The Applicant's representative was not present. There was no explanation why the Applicant, in particular, was not present or represented. The Tribunal noted that the Applicant's representative had said that she had asked for instructions by a date or would withdraw from acting. There was no information provided to the Housing and Property Chamber to suggest that the Applicant's representative had withdrawn from acting. At on or around 10.06 am the Tribunal Clerk contacted the Applicant's representative to confirm if they wished to proceed with the application. The Clerk dialled the number provided to the Housing and Property Chamber. The number rang once then played a message stating "the destination number has not been recognised".
13. The Tribunal dismissed the case as it was not clear that the Applicant wished to rely on the matters within the case.

### Decision

14. 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.**

# G. Miller

9<sup>th</sup> July 2024

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Legal Member/Chair

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Date