



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/RE/24/2667

Re: 4T Hebrides Drive, Dundee, DD4 9SA ("the Property")

Parties:

Home Group Limited ("the Applicant")

Messrs Lindsays, Solicitors ("the Applicant's Representative")

Jennifer Valentine ("the Respondent")

Tribunal Member: Martin J. McAllister (Legal Member)

The Tribunal rejects the application by the Applicant 2024 which is an application under Section 28 A (1) of the Housing (Scotland) Act 2006 (“the 2006 Act”) and Rule 55 of the Rules.

Background

1. The Applicant's Representative submitted an application dated 10 June 2024 for assistance with obtaining access to the Property.
2. The Applicant and Respondent are parties to a private residential tenancy agreement in respect of the Property which is dated 28 August 2022.
3. Clause 4 of the tenancy agreement states: *“The Landlord and Tenant agree that all communications which may or must be made under the Act and in relation to this Agreement, including notices to be served by one party on the other will be made in writing using hard copy by personal delivery or recorded delivery.”*

4. On 11 July 2024, the Applicant's Representative was asked to provide further information, including evidence that the Respondent had received notification of the Applicant's wish to obtain access to the Property.
5. The request for information was in terms of Rule 5 (3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
6. The Applicant's Representative intimated that letters of notification sent to the Respondent, which the Tribunal had copies of, had been sent by ordinary mail and that the Applicant had not been provided with access.
7. In response to the Tribunal, the Applicant's Representative stated that notices sent to the Tenant did not require to be sent by recorded delivery or personal delivery and that the Act referred to in clause 4 was the Private Housing (Tenancies) (Scotland) Act 2016 and not the Housing (Scotland) Act 2006 which was the Act under which the letters of notification had been sent.

Decision

8. **After consideration of the application, the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rules 55 (a) (viii) and (b) (ii) of the Rules and Section 28 A (4) of the 2006 Act.**

Reasons

9. The Legal Member considered the application in terms of Rule 5 and Rule 55 of the Chamber Procedural Rules. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated

powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “

10. The Applicant's right to access to the Property is contained in Clause 20 of the private residential tenancy agreement which states that access must be allowed for an authorised purpose if the Respondent has been given at least forty eight hours' notice. The means of giving notice is provided for in clause 4 of the private residential tenancy agreement, The notification requiring the Respondent to provide access to the Property was given in terms of the private residential tenancy agreement but was sent by ordinary mail and not by either of the methods set out in that agreement. Such notification was not given in terms of Section 28 A of the Housing (Scotland) Act 2006 which was only engaged when the Applicant failed to gain access under the terms of the Private Housing (Tenancies) (Scotland) Act 2016.

11. The Applicant has not provided evidence that appropriate notification had been given to the Respondent which met the requirements of the private residential tenancy agreement and Rule 55 of the Rules.

M McAllister

Martin J. McAllister, Legal Member, 8 August 2024