

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) “the tribunal”

DECISION: in terms of Rule of 27 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Reference number: FTS/HPC/RP/24/1131

Re: Property at 28 Ninth Street, Newtongrange, Dalkeith, EH22 4JJ (“the Property”)

The Parties:

Ms Tamer Soliman, 28 Ninth Street, Newtongrange, Dalkeith, EH22 4JJ (“the Applicant”)

Ms Sara Mehlsen, current address unknown (“the Respondent”)

Tribunal members

Ms Susanne L. M. Tanner K.C., Legal Member and Chair

Ms Sara Hesp, Ordinary Member

Decision

The tribunal dismissed the Application in terms of Rule 27 of the The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”).

Reasons

1. On 10 March 2024, the Applicant made an application to the tribunal in terms of Section 22(1) of the Housing (Scotland) Act 2006 (“2006 Act”), alleging failures of the Respondent to comply with section 14(1)(b) of the 2006 Act.

2. The tribunal accepted the Application for determination and fixed an inspection and hearing for 21 August 2024. On 4 July 2024, the tribunal notified the Applicant of the referral, inspection and hearing.
3. The tribunal attempted service of the Application and notification of the referral, inspection and hearing on the Respondent but service was unsuccessful. The correspondence was returned by Royal Mail to the tribunal's administration on 5 July 2024 marked as "*addressee gone away*".
4. On 24 July 2024, the Applicant was asked by the tribunal to provide another address for the Respondent by 31 July 2024; which failing to make a service by advertisement application with supporting evidence. She was provided with a link to information about service by advertisement on the tribunal's website. She was told that if she did not respond in the required time the inspection and hearing might be postponed. The Applicant did not respond to the tribunal's request or make any contact with the tribunal's administration.
5. On 1 August 2024, the tribunal issued a Direction to the Applicant. The Applicant was told that unless she responded to the orders in the Direction by Monday 5 August 2024 at noon, the inspection and hearing would have to be postponed due to lack of service. She was asked to provide an address for the Respondent or to submit a service by advertisement application, with evidence of efforts to trace the Respondent.
6. The Applicant failed to comply with the Direction and did not make any contact with the tribunal's administration.
7. Due to the failed service and the Applicant's failure to comply with its Direction, the tribunal postponed the inspection and hearing and notified the Applicant about the postponement on 6 August 2024.
8. On 6 August 2024, the tribunal issued a further Direction to the Applicant with an order in the same terms as previously and additionally notifying her that if she failed to comply with its order, the tribunal might dismiss the application in terms of **Rule 27(2) of the 2017 Rules** which provides that "*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.*"
9. The Applicant failed to comply with the tribunal's second Direction and has not made any contact with the tribunal's administration.

10. In all of the circumstances, due to failed service on the Respondent and the Applicant's repeated failure to comply with the tribunal's Directions, the tribunal decided to dismiss the Application, on both grounds (a) and (b) in Rule 27(2), namely that the Applicant has failed to 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; and has failed to co-operate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

Right of Appeal

11. A party aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

12. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Ms Susanne L M Tanner K.C.
Legal Member and Chairperson of the tribunal
1 September 2024