



Decision with Statement of Reasons of the First-tier Tribunal for Scotland Housing and Property Chamber under Section 48 of the Housing (Scotland) Act 2014 and Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/LA/24/2580

Re: Property at Flat 1F1, 81 Clerk Street, Edinburgh, EH8 9JG (“the Property”)

The Parties:

Ms Daisy Marsh, Miss Elizabeth Heath, Mr Johnathan McLoone, Mr Brok Oldac, Flat 1F1, 81 Clerk Street, Edinburgh, EH8 9JG (“the Applicants”)

LetsLet, 5 Clerk Street, Newington, Edinburgh, EH8 9JH (“the Respondents”)

Tribunal Members:

Steven Quither (Legal Member) and Helen Barclay (Ordinary Member)

DECISION

The Tribunal UNANIMOUSLY dismissed the application in terms of Rule 27(2)(b) of the Rules

BACKGROUND

1. This is an application by tenants to enforce various provisions (16, 19, 47, 110 to 113, 124 and 125) of the Letting Agent Code of Practice arising out of the Respondents’ management of the Property on behalf of the landlord, a Nixon Chan.
2. The application was lodged with supporting documentation on 6 June and accepted by Tribunal Notice of Acceptance of 20 June, both 2024, with a Case Management Discussion (“CMD”) thereafter fixed for 8 October, also 2024.
3. Prior to said CMD, on 1 October 2024, Mr Halliday of Halliday Campbell, Solicitors, Edinburgh contacted the Tribunal confirming he was instructed by the Respondents and lodging Preliminary Submissions and Productions on their behalf.

CASE MANAGEMENT DISCUSSION on 8 OCTOBER 2024

4. The CMD duly took place by teleconference on 8 October, with all parties and representatives attending, as a result of which the Tribunal issued a Direction to the parties to provide further information and clarification of their positions, the Applicants to do so by 5 November 2024 and the Respondents to answer by 3 December, both 2024..
5. In addition, the Respondents were to pay £4800 to the Applicants as soon as reasonably practicable, said amount having previously been paid by the Applicants at commencement of their tenancy of the Property.
6. A further CMD was fixed for 17 January 2025.

CASE MANAGEMENT DISCUSSION on 17 JANUARY 2025

7. Prior to this CMD the Tribunal noted that, per its Direction, the Applicants had provided further information by email of 4 November and the Respondents by email from Mr Halliday of 3 December, both 2024, from which it appeared that the £4800 previously referred to had been paid to the First Applicant on 17 October 2024.
8. On 17 January 2024, the CMD again took place by teleconference. However, only the Respondents and Mr Halliday attended.
9. The Applicants' failure to attend came as something of a surprise to the Tribunal.
10. The Tribunal noted the CMD Note from the previous CMD on 8 October 2024 specified a further CMD on 17 January 2025.
11. In addition, the Tribunal Clerk confirmed notification and joining instructions had been sent to the Applicants by email on 5 November 2024.
12. Accordingly, the Tribunal was satisfied, in the absence of any information to the contrary, that the Applicants were aware of today's CMD but, for some reason, had not attended.
13. In these circumstances, Mr Halliday moved for dismissal of the Application.
14. The Tribunal therefore considered whether it was entitled to dismiss the application under Rule 27(2)(b) of the Rules, on the basis that the Applicants

having, ostensibly at least, been aware of the date and time of the CMD, then failed to attend same.

15. Said Rule states:--

“Dismissal of a party’s case

27.—(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.”

16. In the circumstances ie the Applicants’ lack of attendance, the Tribunal decided that the Applicants had failed to co-operate with the Tribunal to such an extent that it could not then comply with its overriding objective of dealing with the proceedings justly and fairly and that accordingly the application fell to be dismissed in terms of said Rule 27(2)(b).

DECISION

17. To dismiss the proceedings under Rule 27(2)(b) of the Rules.

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.

SR QUITHER

17 JANUARY 2025

Legal Member/Chair

Date