Housing and Property Chamber
First-tier Tribunal for Scotland

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/24/0348

Re: Property at Flat 2/3, 1 Maxwellton Street, Paisley, PA1 2TZ ("the Property")

Parties:

8 Investments Scotland Limited, 47 Aytoun Road, Glasgow, G41 5HW ("the Applicant")

Mr Craig Rankine, Flat 2/3, 1 Maxwellton Street, Paisley, PA1 2TZ ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Applicants and the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed in terms of Rule 27(2)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (the Rules).

- Background

By application dated 22 January 2024 (the Application), the Applicants seek a payment order for rent arrears relative to the Property.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 19 August 2024 to be heard by way of conference call alongside a related CMD seeking an Eviction Order. The Application was served on the Respondent by sheriff officers. The Respondent did not appear nor was he represented despite intimation of the CMD date on him. Nonetheless, the Tribunal was satisfied he was aware of the date and the requirement to attend and therefore decided to proceed in his absence.

A Miss Harper appeared for the Applicants from Castle Residential, who were the letting agents for the Applicants. On behalf of the Applicants, it was confirmed that they were seeking a Payment Order in the sum of £2,165.

Following discussion (as detailed in the CMD Note dated 19 August 2024), it was decided that it was appropriate to continue the Application to another CMD to allow the Applicants to produce the documentation including an UpToDate rent statement to show the current arrears and either to show what arrears were due to the Applicants or to produce documentation to demonstrate why the Applicants are entitled to seek payment of the arrears prior to 29 July 2021, for example the missives of sale for the Property.

Whilst a further rent statement was lodged by email on 19 August 2024 as well as a list of contact attempts, they had made to discuss arrears with the Respondent, but these were not lodged in time to be available to the Tribunal at the CMD on that date.

Following that, a CMD was fixed for 27 November 2024, but that CMD was postponed on the Applicants' request and a further CMD was fixed in lieu on 12 February 2025, again to be heard by way of conference call. The date of this further CMD was intimated to both the Applicants and the Respondent on 13 January 2025. On 13 January 2025, on behalf of the Applicants, their representatives lodged further representations. These were:

1) An amended Form F in the name of a Jasdeep Choudhary, which sought payment of arrears totalling £2,975 as at 13 January 2025;
2) A letter dated 13 January 2025 on Castle Residential headed papers stating that Mr Choudhary was "the owner" of the Property and that he "a*ssigned the rent arrears"* to the Applicants which he described as *"my Ltd Company*" as well as that he had "*also submitted an application in my name to recoup the funds owed*".
3) A rent statement dated 13 January 2025 showing arrears of £2,975 as at that date.

- The Case Management Discussion

Neither the Applicants nor the Respondent appeared or were represented at the CMD on 12 February 2025 despite intimation of that date and time to them.

Following consideration of the Application and the further submissions received on 13 January 2025, the Tribunal decided to dismiss the Application in terms of Rule 27(2)(b) of the Rules.

- Reasons for Decision

Rule 27(2)(b) of the Rules states as follows:

"(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to —……..

(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."

Further, Rule 2 of the Rules states as follows:

"(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;

(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;

(d) using the special expertise of the First-tier Tribunal effectively; and

(e) avoiding delay, so far as compatible with the proper consideration of the issues."

The Applicants, through their representatives, were made aware of the date of the CMD on 12 February 2025 and of the requirement to be present at same. The continued CMD had been fixed to allow the Applicants to provide information to clarify their entitlement to the orders sought as well as the level of arrears.

Whilst the Applicants representatives had submitted further information both on 19 August 2024 and 13 January 2025, this further information appeared contradictory and incomplete and, to a certain extent raised more questions than it purported to answer. For example, at the original CMD, the Applicants' representative indicated that the rent due each month was £295 and that there had been a Rent Increase Notice issued (no date specified) that had been withdrawn, but despite the withdrawal of same, the Respondent had from May 2024 been paying at that higher rate and as a result, the total arrears had been reducing by £30 per month. The rent statement lodged with the Application and on 19 August 2024 reflected a similar position, but the statement lodged on 13 January 2025 did not. It records the rent being due at the rate of £325 per month from on or around 1 June 2022, which differs from the previous rental statements provided and the submissions at the previous CMD. The Tribunal had no explanation in front of it as to why that was the case.

Further, with the email dated 13 January 2025, there was a new Form F and the aforementioned purported assignation. These purported to, on one hand assign the arrears to the Applicants, but then to pursue them in the name of Mr Choudhry. These positions contradictory and it was not obvious on what basis a Mr Chaudhry

would be entitled to pursue arrears after 29 July 2021 when the Property was transferred to the Applicants. There was no appearance by the Applicants to explain the position or what their intentions therefore were.

That being the case, the Tribunal was of the view that, due to the Applicants' failure to cooperate with the Tribunal, the Tribunal was not in a position to deal with the proceedings justly and fairly and the Application should be dismissed under Rule 27(2)(b) of the Rules.

- Decision

The unanimous decision of the Tribunal was that the Application should be dismissed.

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.

Rory Cowan

_____ _____12 February 2025_____

Legal Member/Chair **Date**