



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/4258

Re: Property at 16 Houston Terrace, East Kilbride, G74 1DB (“the Property”)

Parties:

Mr Alan Firth, 40 Middlefield, Whitehills, East Kilbride, G75 0HJ (“the Applicant”)

Mr Anthony Idele, Mrs Rosanna Idele (TRANSLATE ITALIAN), 16 Houston Terrace, East Kilbride, G74 1DB; 16 Houston Terrace, East Kilbride, G74 1DB (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Applicant)

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 29 November 2023 (the Application), the Applicant sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act). Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 4 June 2024 which was heard by way of conference call. At the CMD, the Applicant was represented by Jeanette Gardiner and Hannah Tunniecliff of Angel Homes and the Respondents appeared and were represented by a Maureen Smith of the Castlemilk Law and Money Advice Centre.

On behalf of the Applicant, it was confirmed that he was seeking an Eviction Order under Ground 12 of schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016

(the 2016 Act) based on arrears for the period of February 2023 to August 2023 in the sum of £2,335.49.

On behalf of the Respondents, it was indicated that the Application would be defended on the basis that it was denied that Ground 12 applied as the rent for the Property for the period complained of was not lawfully due as a result of issues of disrepair and fitness. Further that, in any event, it would be unreasonable to evict the Respondents.

The issues agreed between the parties and issues in dispute were identified and it was determined that a Hearing would be required. A Direction was issued in relation to the format and manner in which any documents intended to be relied upon at the evidential hearing should be lodged and the Tribunal made it clear that regard would only be had to documents submitted/lodged in accordance with the Direction. Parties were also ordered to lodge a list of any witnesses.

In response to and as required by the Direction, copy documents and a witness list were lodged on behalf of the Respondents. No response to the Direction was received by or on behalf of the Applicant. A hearing was eventually fixed to be heard over 3 consecutive days on 5, 6 and 7 February 2025 (earlier dates had been assigned but were postponed after application by the Applicant)

- The Hearing

By letter dated 3 February 2025, the Applicants' representatives wrote to tribunal administration indicating that the Respondents had secured an alternative tenancy through South Lanarkshire Council and submitted that the Application was therefore unnecessary and invited the Applicant to withdraw same. Whilst tribunal administration was copied in on an email of the same date from the Applicant's letting agents to the Respondents' representatives asking when the keys for the Property would be returned to them, there was no withdrawal of the Application. As a result, the parties representatives were emailed by tribunal administration on 4 February 2025 indicating that, unless withdrawn, the hearing scheduled to start on 5 February 2025 would go ahead as planned.

On 5 February 2025, the Respondents were represented by a Mrs Stevenson of Castlemilk Law and Money Advice Centre, who attended with a witness. Neither Respondent was present due to illness. The Applicant was neither in attendance, nor was he represented. Mrs Stevenson explained that, whilst the Respondents had been offered a new tenancy and had obtained keys for same, they had not completed removing from the Property as they had furniture to move and with the illness of the second named Respondent in particular, they could not move as quickly as they would otherwise have been able to. Mrs Stevenson also indicated that, apart for the email requesting return of the keys, her communications with the Applicant's representatives had gone unanswered. She was therefore unable to assist the Tribunal with any explanation as to why the Applicant was not present or represented or what his intentions were with regard to the Application. As a result of the Applicant's failure to attend or be represented, Mrs Stevenson made a motion to have the Application dismissed, which failing, the hearing postponed and continued to allow the Respondents to vacate the Property. Her preference being to have the Application dismissed.

Following an adjournment to consider the motions made, 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.”

Despite the fixing of the hearing to determine the Application, the Applicant was not present to pursue same. It is clear the Applicant, through his representatives was aware of the date of the hearing and the requirement to be present. Further, no explanation for the failure to attend was provided and it was noted that the Applicant, through his representatives, had not responded to or complied with the terms of the Direction. There were no documents lodged, or witness list provided. Ultimately the Application was made by the Applicant, and it is for him to pursue same and cooperate with the Tribunal to allow the Tribunal to deal with the Application justly and fairly. By not attending, not having a representative present or lodging any material as required by the Direction, he has failed to do so. That being the case, the Tribunal was of the view that due to the Applicant’s 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

Legal Member/Chair

Date 5 February 2025