



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.

Chamber Ref: FTS/HPC/RE/25/0627

Re: 43 Mason Avenue, New Cumnock, KA18 4AY ("the Property")

Parties:

Red Stag Property Group Ltd, ("the Applicant")

McGoogan's (Coatbridge) Ltd ("the Applicant's Representative")

Tribunal Member: Martin J. McAllister (Legal Member)

The Tribunal rejects the application by the applicant dated 12 February 2025 which is an application under Section 28 A (1) of the Housing (Scotland) Act 2006 ("the 2006 Act") and Rule 55 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Background

1. The Applicant submitted an application dated 12 February 2025 for assistance with obtaining access to the Property.
2. On 2 May 2025, the Applicant was asked to provide evidence of failure to obtain access, and to provide a copy of the relevant tenancy agreement.

3. 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”).
4. On 2 May 2025, the Applicant’s Representative responded in the following terms: “The tenancy agreement is not relevant, and you have been provided with this previously.... The tenant is non cooperative and does not communicate and once again we receive no help from FTT.”
5. The tenancy agreement provided by the Applicant Representative was incomplete- it did not have the tenant’s name, it did not contain details of the rent, date of entry or contact details. It was undated and unsigned.
6. The Applicant’s Representative had provided evidence of an attempt to gain access to the Property which had been replied to by the Respondent indicating that this could not be given because she was in hospital. The Applicant’s representative provided copies of emails asking the Respondent to contact it with regard to access.

Reasons

7. 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. “

8. The Legal Member considered it surprising that a registered letting agent would appear to be ignorant of the procedures for a landlord seeking assistance to obtain access to a tenanted property. The fundamental requirement for obtaining access is for there to be a contractual tenancy in existence. The Landlord's Representative's statement that the tenancy agreement “is not relevant” is incorrect. The tenancy agreement provided is not valid. In terms of Rule 55 (b)(i), the Landlord's Representative could have provided information about the tenancy if the tenancy agreement was not available. It chose not to do so.
9. It is not sufficient notification to a tenant to invite them to make contact to arrange an inspection. A landlord should indicate the date, time and purpose of an inspection and can make an application if access is not achieved. The Landlord's Representative provided evidence of a date being provided for access when the tenant could not accommodate it because she was in hospital. This appeared to be a reasonable reason for access not to be provided. No evidence was submitted that other dates for access had not been accommodated.
- 10. 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(b)(i) and 55 (b)(ii) and and Section 28 A (4) of the 2006 Act.**

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

M McAllister

Martin J. McAllister, Legal Member,

18 June 2025