



First-tier Tribunal for Scotland (Housing and Property Chamber)

NOTICE OF DECISION TO DISMISS

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 Paragraph 27

Reference number: FTS/HPV/PF/24/1920

Re: Property at 144 Merkland Lane, Aberdeen, AB24 5RQ (“the Property”)

The Parties:

Paul Thomson, residing at 144 Merkland Lane, Aberdeen, AB24 5RQ (“the Applicant”)

James Gibb Property Management Limited, 3rd Floor, Red Tree Magenta, Glasgow Road, Rutherglen, G73 1UZ (“the Respondent”)

DECISION (in the absence of both Applicant and Respondent)

The Tribunal determined that in terms of Paragraph 27(2)(b) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) the Applicant had failed co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal could not deal with the proceedings justly and fairly. The Tribunal therefore determined to dismiss the Application.

Tribunal Members:- Mr E Miller & Mr D Godfrey

Background

The Tribunal had held a Case Management Discussion (“CMD”) on this matter on 19 November 2024. The Tribunal was comprised of Mr E Miller (Legal Member) and Mr D Godfrey (Ordinary Member).

Neither party was present on the call nor were they represented. The Tribunal was unable to determine the application from the information before it and so issued a direction requiring further information from the parties, predominantly the Respondent. A hearing was set for 13 February 2025.

At the hearing on 13 February 2025 at 10am the same Tribunal members reconvened. The Applicant was again neither present nor represented. Neither party had

responded to the Direction in advance of the hearing. A representative of the Respondent did attend the call. She advised that the Respondent was seeking an adjournment. The employee dealing with the matter had left the Respondent and more time was required to pull together a response. The Tribunal granted the adjournment, albeit reluctantly, and the hearing was continued to 2 June 2025.

Following the hearing on 13 February 2025, the Tribunal again issued a direction, again seeking more information on the dispute from both parties. The direction was as follows:-

The Respondent is required to provide to the Tribunal no later than 21 days before the date of the Hearing:

- 1. Details of all the works carried out at the roof of the Property together with any reports, invoices, quotes and other correspondence obtained by them from any contractors instructed by them. The Respondents are also to provide a timeline and summary of all interactions with the said contractors from the first notification of the issue from the Applicant to date.*
- 2. An explanation, from the Respondent's perspective, as to the progress of the Respondent's complaint, where it sits currently within the Applicant's complaints process and details of the internal timeline they have applied to this.*

The Applicant is required to provide to the Tribunal no later than 21 days before the date of the Hearing:

- 1. Confirmation as to whether he considers all outstanding works to be completed or not. If not, what works are outstanding in his view.*
- 2. His view on where the progress of his complaint to the Respondent currently sits.*
- 3. Whether he wishes to still proceed with the complaint against the Respondent before the Tribunal.*

On 2 June 2025 at 10am the same Tribunal members reconvened. Neither party was present or represented. Neither party had complied with the second direction.

The Tribunal considered its position. The Applicant had submitted their application to the Tribunal but since then had not engaged in any aspect of the process. The Applicant had been asked, as above, a number of specific questions in the second direction, including whether or not he wished his Application to proceed. He had failed to respond.

The Tribunal reviewed the application again. The Tribunal remained unclear as to what stage the complaint by the Applicant had progressed within the Respondent's complaints process. They were unclear as to whether the roof leak complained of was still in existence or had been dealt with (indeed it was unclear if there had been a subsequent leak). The Tribunal remained of the view that the application lacked sufficient detail for it to make any findings in fact and to make any meaningful decision

without making significant assumptions as to the current position. Accordingly the Tribunal was unable to make a decision.

In light of the lack of engagement from either party, the Tribunal saw no merit in continuing the hearing again.

The Tribunal considered the terms of Paragraph 27 of the Regulations, which state:-

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.

The Tribunal considered in particular Paragraph 27(2)(b). Because of the lack of specification in the Application, the Tribunal could not determine matters without further input. The Applicant had failed to attend any of the 3 times the matter had called before the Tribunal. The Applicant had failed to confirm whether works were complete, whether his complaint was still outstanding and whether he still wished to proceed with the application before the Tribunal. Given the Tribunal had specifically asked in a direction for confirmation that the Applicant wished to proceed, it was not unreasonable to assume the lack of a response indicated a lack of desire for the matter to continue. Accordingly, the Tribunal determined that the Applicant had met the test set out in Paragraph 27(2)(b). The Tribunal therefore exercised its discretion to dismiss the application.

Whilst the Tribunal required to dismiss the application under paragraph 27 on the basis of the Applicant's lack of co-operation, it would be remiss of the Tribunal not to comment on the conduct of the Respondent in the course of this matter also. The Respondent ignored the first direction issued by the Tribunal following the CMD, in itself a criminal offence. At the first calling of the hearing, an employee of the Respondent attended to ask for an adjournment so they could submit a response. The Tribunal granted the Respondent that courtesy but the Respondent then failed to submit any response and then further ignored the second direction. But for the Respondent's adjournment request, the Tribunal may have dismissed the matter at the first calling of the hearing. Instead a second hearing took place at the expense of the taxpayer for no particular purpose or benefit. The Respondent showed a lack of regard to the function and working of the Tribunal. They twice ignored directions that they were legally obliged to respond to. They sought an adjournment to allow submissions to be made and then failed to do so. The Tribunal would remind the Respondent that registration as a property factor under the Property Factors (Scotland) Act 2011 requires the Respondent to meet a "fit and proper person" test. The Respondent's conduct during the course of this matter, was not consistent with that requirement in the view of the Tribunal.

Decision

The Tribunal determined to dismiss the Applicant's application under Paragraph 27(2)(b) of the Regulations

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.

E Miller

31/7/25

Legal Member/Chair

Date