



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/24/3413

Re: Property at 42/15 East Main Street, Armadale, EH48 2NS (“the Property”)

Parties:

Miss Morgan Ure, 47 Young Crescent, Bathgate, EH48 2SN (“the Applicant”)

Mr Russell Beresford, 52 Birniehill Crescent, Bathgate, EH48 2RS (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal 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 13 July 2024 the Applicant seeks repayment of the security deposit she claimed to have paid to the Respondent in relation to a tenancy for the Property.

- The Case Management Discussion

A Case Management Discussion (CMD) was fixed for 18 March 2025 heard by way of conference call. At that CMD, the issue of the two tenancy agreements was discussed and whether the initial joint tenancy had ever been formally terminated and how that might affect the Application and the related claim under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 which was heard at the same time.

That CMD (along with the related claim) was continued to allow the parties to confirm whether the tenancy dated from 1 September 2021 had ever been terminated and, if not, what is the status of the later one dated 1 June 2023, which would potentially be relevant to the question of any contractual right of the Respondent to make any deductions from the deposit. It was also continued to allow consideration of whether the joint tenant per that earlier lease (a Mr Markey) was aware of and whether he wished to take part in the proceedings. Both parties were advised to seek legal advice. On 21 April 2025 a written mandate from Mr Markey was sent to the Tribunal by the Applicant.

A further CMD was fixed for 7 July 2025 again to be heard by way of telephone conference. The date of same was intimated to both parties. Whilst the Respondent attended same the Applicant did not. This was notwithstanding initiation of the date of the CMD on her, a reminder being issued by email on the morning of the CMD and the clerk of the tribunal attempting to call her. No explanation was given for her failure to appear. It should be noted that the Applicant was warned in the note for the CMD on 18 March 2025 that failure to be in a position on the issue of whether the joint tenancy was terminated or not may result in the Application being dismissed under Rule 27 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.”

This is the Applicant's application. She was made aware of the date of the CMD on 7 July 2025 and of the requirement to be present at same. She failed to appear without explanation and therefore to insist upon the Application. Despite her email of 21 April 2025 with Mr Markey's written mandate/authority, there were still issues that required to be address in relation to the Application in terms of what tenancy underpinned same and issues of alleged disrepair, but due to the failure to attend, the Tribunal was unable to make enquiries or progress with those issues.

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 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

7 July 2025

Legal Member/Chair

Date