

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 27(2)(b) of the First tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules")

Chamber Ref: FTS/HPC/LA/23/4066

Parties:

LHP Solutions Ltd 2/3, 48 West George Street, Glasgow, G2 1BP ("the Applicant")

McKenzie Court Ltd T/A Mackenzie Way, 36 Hamilton Street, Saltcoats, KA 21 5DS ("the Respondent")

Tribunal Members:

**Josephine Bonnar (Legal Member)
Sandra Brydon (Ordinary Member)**

DECISION

The Tribunal determined that the application should be dismissed.

The decision is unanimous.

Background

1. The Applicant applied to the Tribunal in terms of Rule 95 of the Procedure Rules and Section 48(1) of the Housing (Scotland) Act 2014 Act. A Legal Member of the Tribunal with delegated powers of the President referred the application to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 29 May 2024 at 2pm.
2. The CMD took place on 29 May 2024. The Applicant was represented by Mr and Ms Jalil. The Respondent was represented by Ms Parks, Mr Marchetti, Ms Daly, and Mr Avery.
3. The Tribunal noted that the Respondent had raised an issue about the notification of the Code complaints prior to the application being made, as required by Section 48(4) of the 2014 Act. The Tribunal advised the parties

that this would require to be clarified before the complaints could be considered. The parties were also notified that if application was proceeding to a hearing, the Tribunal would require to see and hear evidence about the terms of the contract between the parties. Mr Jalil said that the document lodged by him had been signed. It had been sent to him by email and then signed. He said that he could provide the email. Ms Parks disputed this. She said that nothing had been signed. Although that might appear to be unusual, it was during the pandemic, and she was short staffed. As a result, the contract was never signed. The Tribunal advised parties that all correspondence relating to the contract would require to be submitted. In addition, the Tribunal would require the Applicant to submit a statement with better specification of the complaints as the information in the application was lacking in detail. Once received, a detailed response from the Respondent would also be required

4. Following the CMD the Tribunal issued a direction to the parties for the provision of further information and documents relating to the notification of the complaints. Both parties provided a response to the direction and the Respondent confirmed that emails sent by the Applicant in October 2023 set out the sections of the Code and the reasons why the Applicant considered that they had been breached
5. A hearing was scheduled for 26 February 2025 at 10am at Glasgow Tribunals Centre, York Street, Glasgow. A further direction was issued to the parties which required the Applicant to submit all relevant correspondence and documentation which related to the contract between the parties and a submission which provided better specification of the complaints. The Respondent was directed to provide a response to the Applicant's submission. Both parties lodged submissions and documents in response to the direction.
6. A hearing took place on 26 February 2025. The Applicant was again represented by Mr and Mrs Jalil. The Respondent was represented by Ms Parks, Mr Marchetti and Ms Daly.

Hearing on 26 February 2025

7. The Legal Member noted that the Respondent now accepted that the Code complaints had been notified in a series of emails in October 2023, but they were still of the view that they had not been told that an application to the Tribunal was to be made.
8. As had been discussed at the CMD, the parties were then advised that the first issue was to determine what had been agreed at the start of the landlord/letting agent relationship – the terms of the contract. As many of the complaints appear to be based on an alleged failure by the Respondent to fulfil their contractual obligations, it was necessary to establish what those obligations were.

9. After some evidence had been heard, Mr and Mrs Jalil sought an adjournment of the hearing as they realised that they had not submitted all relevant documentary evidence. The Respondent objected to the adjournment on the grounds that there had been sufficient time and opportunity to submit documents. Following a short adjournment to consider the matter, the Tribunal determined that it would not be possible to reach a fair and just decision on the application without giving the Applicant one further opportunity to lodge documents. The adjournment was granted. However, the Applicant was put on notice that a further adjournment or postponement was unlikely to be granted for a similar reason.

Further procedure

10. The parties were notified that a hearing would take place on 2 September 2025 at 10am at Glasgow Tribunals Centre, 20 York Street, Glasgow.
11. In response to the direction, the Applicant lodged a large bundle of documents with comments about the Code complaints. In relation to the contract between the parties, the Applicant only provided a copy of email correspondence between the parties in May 2021 when the Applicant requested and was sent a copy of a contract. In response to the direction, the Respondent lodged a copy of the correspondence which related to the termination of the contract between the parties.
12. At 10.52 am on 1 September 2025, the Applicant sent an email to the tribunal administration which stated, "Unfortunately, due to a combination of ill health and childcare issues neither Raffiq nor Kate Jalil will be able to attend tomorrow's hearing. They have expressed their apologies as they appreciate this has previously been postponed and have advised that they understand if this goes ahead in their absence. A full packet of information/evidence was submitted in order for the Tribunal members to understand their concerns." The email also stated that one of their companies has entered administration. A response was issued on the instructions of the Tribunal. This stated that the Tribunal would not be able to make a decision on the application in their absence and that they had to confirm that they would attend or seek a postponement. If seeking a postponement full reasons and evidence to support the request were required. They were also notified that, if they failed to attend, the application might be dismissed if the Tribunal was satisfied that a fair decision could not be made in their absence. No response was received until 9.17 am on the following morning, when a short email was received which stated, "As advised yesterday unfortunately neither Raffiq nor Kate will be to attend today, Please seek postponement". Due to the late notice, the Tribunal determined that the hearing would not be postponed until the Respondent had been given the opportunity to comment on the request.

The Hearing on 2 September 2025

13. The Respondent was represented by Ms Parks and Mr Marchetti. They confirmed that they had received copies of the correspondence between the

Applicant and the Tribunal on the afternoon of 1 September 2025. The Legal Member advised them of the email which had been received and 9.17. The representatives confirmed that they opposed any further adjournment of postponement of the hearing.

- 14.** Following discussion regarding the options available to the Tribunal, the Tribunal confirmed that the hearing would not proceed in the absence of the Applicant.

Reasons for Decision

The postponement request.

- 15.** The postponement request was not received until 9.17am on the morning of the hearing, with the hearing due to commence at 10am. As the Tribunal were already present, and the Respondent's representatives had arrived and were in the waiting room, the Tribunal determined that the hearing should be convened, and the views of the Respondent obtained. The Respondent representatives confirmed that they opposed the request.

- 16.** Rule 28 of the 2017 Procedure Rules states that a party seeking "an adjournment or postponement of a hearing" "must – (2)(a) if practicable, notify all other parties of the application for an adjournment or postponement, (b) show good reason why an adjournment or postponement is necessary, and (c) at the discretion of the First-tier Tribunal provide evidence of any fact or matter relied upon in support of the application for an adjournment or postponement. (3) The First tier Tribunal may only adjourn or postpone the hearing at the request of a party on cause shown".

- 17.** The postponement request is refused for the following reasons

- (a) The Applicant did not notify the Respondent although they have their contact details, and it would have been "practicable" for them to have done so. They therefore failed to comply with Rule 28(2)(a).
- (b) Although they had been notified on 19 May 2025 that the hearing would take place on 2 September 2025, the Applicant did not notify the Tribunal that there was no one who could attend until 1 September 2025 and did not seek a postponement until 9.17am on the morning of the hearing, with the hearing due to start at 10am.
- (c) Due to the late notice, it was not possible to consider the request and deal with it administratively to minimise inconvenience to the other party. The Respondent's representatives were already in attendance at the Tribunal centre.
- (d) A previous hearing had been adjourned at the request of the Applicant during the hearing, in order that they could lodge further documents. This had been

opposed by the Respondent.

- (e) The Applicant failed to provide full reasons for the request and no evidence was submitted to support the request. The Applicant therefore failed to comply with Rule 28(2)(b) and (c).

18. The Tribunal is also satisfied that the Applicant has not shown cause why the hearing should be postponed and determines that it would not be in the interests of justice to postpone the hearing.

Dismissal of the application.

19. Rule 27(2) of the Tribunal Procedure Rules 2017 states, “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”.

20. Rule 29 stipulates that the Tribunal can proceed with a hearing in the absence of a party as long as the Tribunal is satisfied that the party has been given notice of the hearing.

21. At the CMD on 29 May 2024 and the hearing on 26 February 2025, the Tribunal notified the parties that further evidence would be required in relation to the contract between the parties. Neither party has submitted a signed copy of a contract. The Applicant claimed that a contract was signed. The Respondent disputed this. Furthermore, the unsigned copy contract submitted by the Applicant was not sent to them until 2021, a year after the Respondent started to manage the properties. It does not cover all the terms which the Applicant claims were breached, such as three-monthly arrears statements. The parties were notified that oral evidence would be required in addition to copies of all relevant correspondence.

22. The Tribunal issued directions following the CMD and the adjourned hearing to give the parties the opportunity to lodge further relevant documents. Less than 24 hours before the adjourned hearing, the Applicant advised the Tribunal that no one would be able to attend and they invited the Tribunal to make a decision on the application, although they had been advised that clear evidence of the contractual arrangements was required. Their response to the direction had not provided this. The Tribunal notified the Applicant that attendance was required and that the case could be dismissed if they failed to attend. The Tribunal was also satisfied that it would not be appropriate to grant a further adjournment or postponement.

23. The Tribunal is therefore satisfied that the hearing could not proceed in the Applicant's absence and should be dismissed for the following reasons: -

- (a) It is for the Applicant to establish that their complaints should be upheld, not for the Respondent to demonstrate that the complaints have no merit.
- (b) The parties' contract is central to the complaints. The terms of the contract are in dispute and the documents lodged by the Applicant do not clearly establish what was agreed. An unsigned contract has been lodged which does not cover all the alleged terms which the Applicant states were not fulfilled.
- (c) The Applicant's written submissions are not easy to follow, and additional oral evidence would be required to fully understand the complaints.
- (d) The Applicant did not attend the hearing and therefore failed to cooperate with the Tribunal to such an extent that the Tribunal could not deal with the proceedings justly and fairly.

24. The Tribunal is therefore satisfied that the application should be dismissed in terms of Rule 27(2) of the Tribunal Procedure Rules.

Appeals

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.

Josephine Bonnar Legal Member
9 September 2025