

Housing and Property Chamber

First-tier Tribunal for Scotland



**First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")**

**DECISION: Rule 27 of the First-tier Tribunal Housing and Property Chamber
(Procedure) Regulations 2017 ("the 2017 Rules")**

Chamber Ref: FTS/HPC/CV/20/1928

Re: Property at 13 Glengarry Close, Dumbarton, G82 2NQ ("the Property")

Parties:

**Mr Christopher Kennedy, 14 Carrick Terrace, Dumbarton, G82 5BF
("the Applicant")**

**Harper McLeod, Solicitors, The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE
("the Applicant's Representative")**

**Mr Robert Wilson and Ms Stacey McCear, 13 Glengarry Close, Dumbarton, G82
2NQ
("the Respondents")**

Tribunal Members:

Ms. Susanne L. M. Tanner Q.C. (Legal Member)

DECISION

(1) The tribunal dismissed the Application in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, because the Applicant failed to comply with an order which stated that failure by the Applicant to comply with the order could lead to dismissal of the proceedings or part of them; and failed to cooperate with the First-tier Tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

(2) It follows that as the Application has been dismissed, the adjourned CMD fixed for 17 March 2021 will be cancelled and both parties will be notified.

(3) A report will be made to the appropriate authorities about the fact that the Applicant is not registered as a landlord.

STATEMENT OF REASONS

Procedural Background

1. On 11 September 2020, the Applicant's Representative made an Application to the tribunal in terms of Section 16 of the 2014 Act and Rule 111 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £5,100.00 in respect of rent arrears.
2. The Application stated that documentation was attached but none was submitted. The tribunal's administration contacted the Applicant's representative to request the document. On 18 September 2020, the following documents were provided:
 - 2.1. Tenancy agreement (not signed or dated); and
 - 2.2. Rent statement for the period from 10 January to 10 August 2020
3. The tribunal's administration obtained the Title Sheet for the Property which shows that the Applicant is registered as the proprietor of the Property.
4. The tribunal's administration checked the landlord registration details for the Property which show that no details are registered for this Property.
5. On 8 October 2020, the Application was accepted for determination by the tribunal and the Applicant's Representative was notified.
6. On 19 October 2020, parties were notified of the date, time and arrangements for a CMD on by teleconference on 19 November 2020 at 1400h. The Respondents were invited to submit written representations to the Application by 9 November 2020. On 21 October 2020, both Respondents were personally served by Sheriff Officers with the Application documentation and notice of the date, time and arrangements for the CMD. The Respondents did not submit written representations or make any contact with the tribunal in advance of the CMD.
7. On 4 November 2020, the Applicant's Representative submitted an updated rent statement for the period to 10 October 2020 and a request to amend the Application to seek the increased sum of £7,300.00. The tribunal consented the Application to be so amended to seek the sum of £7,300.00, in accordance with Rule 14A of the 2017 Rules.
8. A Case Management Discussion (CMD) took place on Thursday 19 November 2020 at 1400h by teleconference. Ms Preece from the Applicant's Representative attended the CMD on behalf of the Applicant. The Respondents did not attend

the hearing. Service on the Respondents was made by way of service by Sheriff Officers on 21 October 2020. Ms Preece stated that a text message had been received by the Applicant from the First Respondent, Mr Wilson, on 9 November 2020, asking about his arrears, stating that they did not want to leave the property and asking if they could come to an arrangement about payment. The First Respondent did not make reference to any ongoing tribunal proceedings in the text message. Ms Preece advised that the Respondents both remained in the Property and there was no action for eviction at that time.

9. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.
10. The tribunal allowed Ms Preece a short adjournment to confirm two issues: (1) why the copy tenancy agreement which had been lodged was unsigned and undated; and (2) details of the Applicant's registration as a landlord with the local authority, given that no details were shown for the Property address when the tribunal's administration checked the registration system.
11. Following the adjournment Ms Preece indicated that she had been unable to make contact with her client on the number he had provided and that although she had also emailed asking him to call, she did not anticipate hearing from him during the CMD. She requested an adjournment to another date in order to confirm both issues.
12. The tribunal chair adjourned the Case Management Discussion in terms of Rule 28 to a date to be fixed and notified to the Applicant's Representative and to the Respondents, to allow the Applicant's Representative to produce a signed and dated copy of the tenancy agreement; which failing to make submissions on the basis of the unsigned undated copy which has been lodged with the Application. Notes on the CMD were prepared by the tribunal chair and sent to both parties. Reference is made to the full terms of the Notes.
13. A further CMD was fixed for 17 December 2020 at 1400h and notified to both parties. Ms Preece attended on behalf of the Applicant. The Respondents did not attend. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

14. Ms Preece stated that she had hoped to be in a position to update the tribunal in advance of the CMD and to provide copies of the documents but was unable to do so. She stated that she had spoken to the Applicant after the first CMD and he had confirmed that he had a signed copy of the lease and evidence of his registration as a landlord and that he would send those documents to her. Ms Preece stated that she had then become increasingly concerned about the lack of contact from the Applicant. She stated that around half an hour before the CMD she had received an email from a female emailing from the Applicant's email address. Ms Preece believed on that basis of previous correspondence that she was the Applicant's partner. The female advised that the Applicant was receiving treatment in hospital for a medical condition so he was not in a position to submit the documents. Ms Preece stated to the tribunal that the documents ought to be available in the very near future and she sought a further adjournment to enable her to do so. The tribunal chair indicated that in the absence of a signed tenancy agreement it would be open to the Applicant's representative to make submissions about the order sought. The tribunal chair indicated that proof of the Applicant's landlord registration was not required for the order sought but that the lack of registration may be reported by the tribunal's administration. However, Ms Preece indicated that since her client had told her that he had the signed tenancy document, she would prefer to seek an adjournment to produce that to the tribunal. She submitted that an adjournment to the start of February 2021 would enable the matters to be attended to once the Applicant is out of hospital.
15. The CMD was adjourned to 1 February 2021 at 1000h by teleconference to enable the Applicant's Representative to obtain and submit a copy of the signed tenancy agreement; or to consider legal submissions in relation to the order sought if she is unable to obtain the document. The Applicant's Representative also undertook to confirm the position regarding the Applicant's registration as a landlord for the Property.
16. The Applicant's representative received oral intimation of the date and time of the Case Management Discussion before adjournment of the proceedings on 17 December 2020. The date, time and details for the next Case Management Discussion were notified in writing to both parties by the tribunal's administration by letter dated 22 December 2020. The Respondents signed for the said notification on 24 December 2020.
17. A CMD took place on 2 February 2021 at 1000h by teleconference. Ms Preece attended on behalf of the Applicant. The Respondents did not attend. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the application upon

the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

18. Ms Preece stated that unfortunately, despite attempting to take instructions from her client, she was not much further forward than the last occasion and had not been provided with the requested documents. So far as she understands, the Applicant is no longer in hospital. The Applicant has emailed Ms Preece and has indicated that the Respondents had offered a payment plan which he might be minded to accept as he has been told that one of the Respondents is due to receive funds from a payout. Ms Preece stated that she had stressed the importance to the Applicant of producing the required documents, particularly in relation to the landlord registration certificate. Ms Preece stated that she had sought instructions as to whether the Applicant wishes to withdraw the case, however, she is without proper instructions. She stated that although it appears that the Applicant intends to withdraw the Application if a payment arrangement is reached, she is not in a position to state that categorically. She stated that as she is without instructions she cannot invite the tribunal to take any particular action. Following discussion about Rule 27 (dismissal of a party's case) and Rule 15 (withdrawal of an application), Ms Preece invited the tribunal to consider a further continuation to a date to be afterwards fixed.

19. The tribunal chair decided to further adjourn the matter to a date to be afterwards fixed and to issue Directions which include an order which states that failure by the Applicant to comply with the order could lead to the dismissal of the proceedings.

20. The CMD was adjourned to a date to be afterwards fixed. A copy of the CMD Note was sent to both parties.

21. On 1 February 2021, the tribunal issued Directions to the Applicant and his representative, which include state that the failure to comply with the order could lead to dismissal of the proceedings. The Directions were in the following terms:

“... The Applicant or his representative is required to provide to the tribunal's administration no later than 5pm on 9 February 2021:

- 1. a copy of the signed tenancy agreement; or if no signed tenancy agreement is available, an outline legal submission in relation to the order sought in its absence;*
- 2. proof of the Applicant's landlord registration for the Property with the local authority / Landlord Registration Scotland; and*

3. *written confirmation as to whether the Applicant wishes to withdraw the Application in terms of Rule 15.*

NOTICE in terms of Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations: The tribunal may dismiss the whole proceedings if the Applicant fails to comply with the terms of this order, in terms of Rule 27(2) of the 2017 Rules. ...”

22. The Applicant and his representative failed to comply with the orders in the tribunal’s Directions.

23. On 10 February 2021, notification was sent to both parties of the date, time and details for the next Case Management Discussion on 17 March 2021.

Application of relevant statutory provisions

24. Rule 27(b) of the 2017 Rules provides that the tribunal may dismiss the whole or part of the proceedings if the applicant has failed to 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 the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

25. The Applicant (through his Representative) has failed to 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; and the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly. The Applicant and/or his representative failed to comply with tribunal’s Directions of 2 February 2021. The Applicant’s Representative has not been fully instructed for previous CMDs; the Applicant has not provided his Representative with the information required to progress matters at previous CMDs or to respond to the tribunal’s Directions. The Applicant’s Representative indicated at the most recent CMD that she anticipated being instructed to withdraw the Application, but no such withdrawal has been forthcoming.

26. The tribunal therefore dismisses the Application in terms of Rule 27 of the 2017 Rules.

27. It follows that the adjourned CMD fixed for 17 March 2021 will be cancelled.

28. A report will be made to the appropriate authorities about the fact that the Applicant is not registered as a landlord.

Appeals

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.

Ms Susanne L M Tanner QC
Legal Member and Chair

9 March 2021