

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/19/3523

Re: Property at 79 Braehead Way, Bridge of Don, AB22 8RR (“the Property”)

Parties:

Miss Gemma Guy, 73 Collieston Circle, Bridge of Don, Aberdeen, AB22 8UT (“the Applicant”)

Miss Fiona Bruce, 33 Duffus Crescent, Elgin, IV30 5PY (“the Respondent”)

Tribunal Members:

Gillian Buchanan (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.

Background

At the Case Management Discussion (“CMD”), the Respondent was personally present and represented by Mr Dean Purdie, DJP Solicitors, Aberdeen.

The Applicant was neither present or represented (but see further details under “Observations” below).

Submissions for Respondent

In the absence of the Applicant Mr Purdie submitted that the Application should be dismissed.

Mr Purdie’s primary submission for dismissal was made on the basis that there are no sums due by the Respondent to the Applicant. He submitted:-

- i. That the Applicant is seeking the return of money paid by Aberdeen City Council which the Council does not seek back;

- ii. That, in any event, the Respondent opposes the claim based on the Respondent having a claim against the Applicant which can be offset. He made reference to the Applicant having damaged items within the Property and the Property itself the value of which exceeds £1000.00.

Mr Purdie's secondary submission was that in the absence of the Applicant the Application should be dismissed.

Reasons for Decision

The Tribunal did not consider that the primary submission made on behalf of the Respondent could be granted as to do so would involve a determination of the issues between the parties and there was not adequate information before the Tribunal to make such a determination, for example, there did not appear to be any complete rental statement, showing all sums due by way of rent and all sums paid by the Applicant, her mother and Aberdeen City Council by way of housing benefit with details of the periods to which the housing benefit payments related. The Tribunal was also not presently persuaded on the information available in the papers that the Respondent was correct in treating housing benefit paid in arrears as rent in advance for entirely different periods. These matters required explored.

The Tribunal did, however, consider that there was merit in the secondary submission made. In terms of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, Schedule Part 1, Rule 29, if a party does not appear at a hearing the Tribunal on being satisfied that the requirements of Rule 24(1) have been duly complied with may proceed with the application on the representations of the party present and all the material before it.

The Tribunal was satisfied that the Applicant had received due intimation of the CMD in terms of Rule 24(1). The Tribunal had no explanation for the Applicant's non-attendance. In the absence of the Applicant attending to confirm that she wished to proceed with the Application the Tribunal was entitled to determine that she did not wish to proceed with it and accordingly determined that the Application should be dismissed.

Observations

Subsequent to the conclusion of the CMD and the departure of the Respondent and Mr Purdie from the hearing room, the Venue Assistant became aware that the Applicant was in the Court building and had arrived in time for the CMD but, in error, had been shown to the general witness area within the Court building by the Court reception staff. The Venue Assistant reported the position to the Tribunal. The Venue Assistant made enquiries to see if the Respondent and Mr Purdie were still in the building but they had left. The Clerk to the Tribunal spoke to the Applicant to explain the situation that had very unfortunately arisen and that an order had been made by the Tribunal that dismissed the Application. The Applicant was advised by the Clerk that it would be open to her to make an application for recall of the decision. Clearly, given the sequence of events, it would be in the interests of justice that any application for recall made by the Applicant be granted.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



28 January 2020
Date