



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the first-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/18/1889

Re: Property at 219F Victoria Road, Aberdeen, AB11 9NH (“the Property”)

Parties:

Mr Derek Featherstone, C/O Geraghty-Gibb, 43 Union Terrace, Aberdeen, AB10 1NP (“the Applicant”)

Mr Didier Omgba, 219F Victoria Road, Aberdeen, AB11 9NH (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)
Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed due to it not being possible to effect intimation of the hearing on the Respondent

Background

1. By application dated 19 July 2018 the Applicant applied to the Tribunal for an order for payment in respect of rent arrears due by the Respondent in the sum of £4350.00. The applicant submitted copies of the Tenancy agreement, AT5, AT6, Sheriff Officers execution of Service, Section 11 Notice and rental statements.
2. By Notice of Acceptance dated 25 September 2018 a legal member with delegated powers accepted the application and referred it to a Tribunal.
3. A hearing was assigned to take place at the Credo Centre, 14-20 John Street, Aberdeen on 20 November 2018. Intimation was given to the Applicant’s representative Marlene Ogston, Geraghty Gibb, 43 Union Terrace, Aberdeen

by post and Sheriff Officers were instructed to intimate the hearing on the Respondent.

The Hearing

4. The Hearing was attended by the Applicant's representative Mrs Ogston. There was no appearance by the Respondent
5. Mrs Ogston went on to say that she had become aware that the Respondent was no longer living in the property and believed he had left the country probably several months ago. She had contacted the police who had advised her that there was a warrant out for the Respondent's arrest. She had attended at the property with the police and found it to be empty with none of the respondents belongings remaining. The property had been left unlocked. The Respondent had not returned the keys. She had been advised by the police to change the locks which she had done. She had contacted the Respondent's employers. They had told her that the Respondent was no longer in the country and had returned home to Holland. She had tried to contact the Respondent by phone and email. She had noted in about May of this year that the ring tone had been a European one. The Respondent had answered and said he would be returning the following week. He had not done so. She had tried phoning on several occasions after that and always got the same ring tone. The Respondent had not answered. He had not replied to emails. He had not paid any rent since April.
6. Mrs Ogston was aware that the Respondent would not have received intimation of the hearing as although Sheriff Officers had delivered the papers by letterbox service on 26 October she knew that he was not living at the property as the locks had been changed and she believed he remained abroad and did not intend to return.
7. Mrs Ogston said she wanted closure for her client but did not know what could be done if it was not possible to effect service of the order on the Respondent.
8. There then followed a discussion between Mrs Ogston and the Tribunal as to whether the Tribunal could progress the application any further when despite there being an execution of service by the Sheriff Officers it was within the knowledge of the Tribunal that the Respondent in reality had no knowledge of the existence of these proceedings.
9. After a short adjournment to consider matters the Tribunal considered that as the Respondent did not know that the hearing was taking place it could not grant the order sought.
10. There then followed further discussion with Mrs Ogston as to whether it would be possible to adjourn the hearing to allow further time for intimation of a new hearing but given the absence of any current address for the

Respondent and little prospect of any address being found in the near future the Tribunal concluded it had no option other than to dismiss the proceedings.

Decision

11. The Tribunal having been made aware that the Respondent had not had intimation of the date, time and place of the hearing and there being no prospect of intimation of a further hearing being made on the Respondent within a reasonable period of time dismissed the application.

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.

Graham Harding



Legal Member/Chair

20 November 2018

Date