



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/CV/20/0054**

**Re: 3/3 Hopetoun Street, Edinburgh, EH7 4NE ("the Property")**

#### **Parties**

**Mr Geoffrey Hopkinson (Applicant)**

**Mr Mark Doherty (Respondent)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

#### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that the Applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal could not deal with matters justly and fairly.**

#### **Background**

1. The application was received by the Tribunal under Rule 111 on 8 January 2020.
2. The application had called for consideration by the Tribunal at a Case Management Discussion (**CMD**) on 11 August 2020. The CMD was adjourned as service had not been effected on the Respondent and an application for Service by Advertisement was to be made by the Applicant.
3. No application for service by advertisement was received so the Tribunal wrote the Applicant by letter of 5 November in the following terms:

*"we need you to provide us with the following:*

- *The case has been reviewed by a legal member who notes you have not responded to two previous requests for instructions as to whether you wish to withdraw the*

*application or if you wish to proceed to ask for the application to be served by way of service by advertisement as at the last Case Management Discussion you indicated the Respondent had left the Property and may not have received notice of the application.*

*• I attach once more below the link regarding Service by Advertisement. You are required to advise the Tribunal within 14 days if you wish to proceed and to complete an application for service by advertisement or the President may decide to dismiss your application for failure to co-operate with the First Tier Tribunal to such an extent that the First Tier Tribunal cannot deal justly with proceedings.*

*Please reply to this office with the necessary information by 19 November 2020. If we do not hear from you within this time, the President may decide to reject the application.”*

4. No response was received.

### **Reasons for Decision**

5. The Tribunal considered the application in terms of Rule 27 of the Chamber Procedural Rules. That Rule provides:-

#### **“ Dismissal of a party’s case**

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(2) 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.

6. Rule 111 of the Tribunal Rules requires:

#### **Application for civil proceedings in relation to a private residential tenancy**

111. Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal’s jurisdiction) of the 2016 Act, the application must—

(a) state—

(i) the name and address of the person;

(ii) the name and address of any other party; and

(iii) the reason for making the application;

(b) be accompanied by—

(i)evidence to support the application; and

(ii)a copy of any relevant document; and

(c)be signed and dated by the person.

The applicant failed to provide an application for Service by Advertisement in circumstances where the Respondent's address was unknown. The application could not proceed.

7. The Tribunal consider that the Applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal could not deal with matters justly and fairly. The application is accordingly 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.**

  
**Alan Strain**



**27 November 2020**

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**Legal Member/Chair**

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**Date**