



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/1104

Re: Property at 12A East Shaw Street, Greenock, PA15 1PW (“the Property”)

Parties:

Miss Susan McLoughlin, 25 Caraway Approach, Dayton, Western Australia, 6055, Australia (“the Applicant”)

Mr Michael Ferguson, 12A East Shaw Street, Greenock, PA15 1PW (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is to be dismissed.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant's representatives Messrs Blair & Bryden on 11 May 2021 and finally amended to show the correct rule and details by replacement pages on 8 July 2021
2. A first Case Management Discussion CMD had taken place on 1 September 2021. Due to a lack of sufficiency of evidence provided with the application the Tribunal issued directions and a further CMD had to be scheduled. The CMD note of 1 September 2021 is referred to for its terms and held to be incorporated herein.
3. A further CMD had taken place on 20 October 2021, the CMD note of that date is referred to for its terms, as are the directions issued. At the second CMD on 20 October 2021 neither party attended despite the Applicant's representatives having been advised about the date, time and joining details for the CMD. On that occasion the Tribunal considered that although neither party attended, in light of

the previous recent representations made by the Applicant's representative the case should not be dismissed outright and a further opportunity should be given to the parties to attend a 3rd CMD in due course.

4. Both parties were then advised of the date, time and joining instructions for the 3rd CMD, which was to take place on 2 December 2021. Unfortunately due to problems with Royal Mail it was not possible to verify that the Respondent had received the notification. Ms Swan attended the CMD and advised that it is likely that the property is now abandoned as no further communication from the Respondent had been received. On the day she was not certain whether the proceedings would still be insisted upon. At the CMD it was agreed that Ms Swan would take further instructions from the Applicant and advise the Tribunal by Friday 3 December 2021 whether a further CMD would be necessary or the application withdrawn. The CMD note of said date is referred to for its terms.
5. On 3 December 2021 Ms Swan sent an email to the Tribunal confirming the application was not withdrawn and indicating that a payment order application would be lodged in due course. The legal member thereafter instructed the administration to serve the notification of the 4th CMD to be held on 17 January 2022 on the Respondent by Sheriff Officers to avoid any problems in verifying service. Service was carried out by Sheriff Officers on the Respondent on 8 December 2021. Service of the date, time and joining details was carried out on the Applicant's representatives by email to lswan@blair-bryden.co.uk on 8 December 2021 at 11:24 hours. This was to the email address intimated in the application and used in previous correspondence with the Applicant's representative.
6. At the CMD on 17 January 2022 neither party attended. The Tribunal tried to contact the Applicant's representative but was unable to contact her by telephone.
7. Neither the Applicant nor the Applicant's representatives had requested a postponement or change of date.
8. The application was made on grounds 1 and 12 of schedule 3 of the Act. No up to date rent statement showing the current arrears as at the date of the CMD had been lodged. The last rent statement only reflected the position to 29 October 2021. In the direction of 20 October 2021 the Tribunal had explicitly narrated that up to date rent arrears information would have to be provided at a CMD. Paragraph 10 of the CMD note of 20 October 2021 explicitly put the Applicant's representative on notice that if there was further failure to appear the Tribunal may dismiss the application. The only evidence provided regarding ground 1 of schedule 3 of the Act was a short letter from Messrs Blair and Bryden to the Applicant dated 28 September 2021, which stated "We write to thank you for your instructing us to act in the marketing of the above property. Our estate agent will be in touch with you in due course to progress matters when we are able to gain access to the flat." Without an oral update on the process of this and the continued intention of the Applicant to sell the property and any reasonableness considerations the Tribunal should take into account, the Tribunal did not consider it was in a position to make an order.

Reasons for Decision

9. Rule 27 of the procedural rules 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.

10. The Applicant did not attend the 4th CMD on 17 January 2022 and was not represented. The third CMD had been necessitated as the Applicant had not attended or been represented at the 2nd CMD on 20 October 2021. It had been made clear in the note after the 2nd CMD that if there is no attendance by the Applicant on that occasion the Tribunal had only decided not to dismiss the case because of the specific recent information received prior to the 2nd CMD but had contemplated dismissing the action. The CMD note should have put the Applicant's representative on notice that if there is no attendance by or for the Applicant, the Tribunal would contemplate a dismissal under rule 27.

11. Without further up to date information from the Applicant the Tribunal is not able to decide the case justly and fairly, in particular as there is no up to date information about the level of rent arrears, although these are one of the grounds relied on in the application. This is the second occasion the Applicant's representative did not attend a CMD despite having been correctly notified. No explanation was provided as to why the Applicant or the Applicant's representative would not be attending.

12. In the circumstances the Tribunal unanimously considered that the Applicant failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal could not deal with the application justly and fairly.

13. In light of that the Tribunal dismisses the application in terms of Rule 27 (2) of the procedural rules.

Decision:

The application is dismissed in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

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.

**Petra Hennig McFatridge
Legal Member/Chair**

**17 January 2022
Date**

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