



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/1723

Re: Property at 96 Marswood Green, Hamilton, ML3 9EE (“the Property”)

Parties:

Granite Valley Limited, 23 Townhead Street, Hamilton, ML3 7BQ (“the Applicant”)

Ms Kellyann McCluskey, 96 Marswood Green, Hamilton, ML3 9EE (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr L Forrest (Ordinary Member)

Decision (in absence of the Applicant and Respondent)

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

Background

1. This is a Rule 65 application received on 25th May 2023. The Applicant was seeking an order for possession on the grounds of rent arrears. The Applicant’s representative lodged a copy of a short assured tenancy which commenced on 6th July 2017 for a period to 5th January 2018 and monthly thereafter, copy form AT5, copy form AT6 and section 33 notice with evidence of service, copy section 11 notice with evidence of service, and a rent statement showing arrears as at 6th May 2023 of £5069.72.
2. The Applicant’s representative was notified of a Case Management Discussion set down for 13th September 2023 by letter dated 10th August 2023.
3. The application and notification of Case Management Discussion was served upon the Respondent by Sheriff Officer on 14th August 2023.

4. By email dated 12th September 2023, the Applicant's representative was asked to lodge a copy of the Notice to Quit which had been referred to in the application documents, but had not been lodged with the Tribunal.

The Case Management Discussion

5. A Case Management Discussion ("CMD") took place by telephone conference on 13th September 2023. Neither party was in attendance. The Tribunal Clerk attempted to contact the Applicant representative without success.
6. The Tribunal considered that proper notification of the CMD had been made upon both parties. Furthermore, the email to the Applicant's representative on 12th September mentioned the CMD on 13th September 2023. The Tribunal decided to dismiss the application as it was impossible to deal with the proceedings justly and fairly in the absence of the Applicant or their representative.
7. The Tribunal also observed the following issues with the application:
 - (i) There was no Notice to Quit, therefore it appears that the contractual tenancy has not been brought to an end. There were no representations made to the Tribunal to indicate that the Applicant intended to proceed in terms of section 18(6) of the Housing (Scotland) Act 1988 ("the Act").
 - (ii) The Form AT6 stated that the application was brought under ground 8 of Schedule 5 to the Act. Ground 8 of the Act has been repealed.
 - (iii) The application referred to grounds 8 and 8A, however, no representations were made by the Applicant to assist the Tribunal in deciding whether or not to give leave to add ground 8A in terms of section 19(2) of the Act.
 - (iv) No evidence of compliance with the pre-action requirements for private landlords was lodged.
 - (v) Although the Applicant is a registered landlord, the Property does not appear on the Register of Landlords.
 - (vi) It appears that rent is being paid to an unregistered letting agent. The letting agent does not appear on the Letting Agent Register, and the registration number quoted for the letting agent in the tenancy agreement is not included on the Letting Agent Register.

Decision

8. The application is 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.



Legal Member/Chair

13th September 2023
Date