



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(2)(a) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/PR/20/0690

Re: Flat 21, 9 Cedar Court, Glasgow, G20 7NT ("the Property")

Parties

Miss Anna Vgenopoulou (Applicant)

Mr Ahmed Boutabane (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 comply with an order of the Tribunal which stated that failure to comply would lead to dismissal of the proceedings.

Background

1. The application was received by the Tribunal originally under Rule 103 on 26 February 2020 of the Tribunal's Rules of Procedure for a penalty against the Respondent for failure to lodge a tenancy deposit in a tenancy deposit scheme under Section 10 of ***The Tenancy Deposit Schemes (Scotland) Regulations 2011***.

The following was lodged in support of the application:-

- i. Details of how the tenancy was formed and details of the tenancy set out in an e-mail dated 13th March 2020;
- ii. A copy of text messages between the Respondent and the applicant dated October 2019 and February 2020;
- iii. Copy bank statements from the Applicant showing the sum of £200 which was paid as a part deposit on 17th October 2019;

- iv. Further sum of £740 paid on 31st October being remainder of deposit and sums towards the first month's rent in the sum of £40 paid on 21st November 2019;
- v. Payments of £500 made to the Respondent on 2nd December, 2nd January and 3rd February.

2. The application proceeded to a Case Management Discussion (**CMD**) on 12 August 2020. The Applicant was unable to attend the CMD and the Respondent did not participate and was not represented. The Legal member conducting the CMD identified that further information was required and issued a Direction to the Applicant to that effect. In particular, the Legal Member wished the following information to be provided:

- a. The Applicant has explained she found the room to let at the Property on Gumtree and contacted the owner and paid an initial deposit of £200 followed by £740 as additional deposit and a month's rent at the end of October. This is supported by the bank statements the Applicant has lodged. The Applicant has however put down the same address, namely Flat 21, 9 Cedar Court Glasgow as the Landlord or Respondent's address. The Applicant states in her application that she was advised by citizen advice bureau that the Landlord has a duty to lodge a tenancy deposit in a tenancy deposit scheme and she has therefore applied under rule 103 for a penalty for failure to do so. However the Tribunal requires to know did the Landlord or Respondent live at the same address while she was a tenant there? If the landlord did live at the same Property then the tenancy or occupancy is not one to which the Tenancy Deposit Schemes (Scotland) Regulations 2011 apply and the Respondent would not be obliged to lodge the deposit in a tenancy deposit scheme.
- b. The Applicant has also stated that she thinks her deposit was £500 however the text messages state that the first £200 was part deposit and then the landlord was seeking a further £270 for the balance of the deposit which makes the deposit £470. The Applicant is requested to clarify why she believes the deposit is £500?
- c. If the Landlord did not live at the Property at Flat 21,9 Cedar Court while she was a tenant can she confirm why she believes he now lives there or when he moved back?
- d. If he did live there during her occupancy and if therefore the Tenancy Deposit Regulations do not apply does the Applicant wish to change her application to Rule 111 for recovery of the deposit as she has stated she is looking to get her deposit back in her e-mail of 12th August?

The Legal Member made a Direction for the Applicant to answer the issues identified above, and is adjourning the CMD to another date and time which will be intimated to both the Applicant and Respondent in due course. The Legal Member determined it would be appropriate to issue a direction to the Applicant asking her to respond to the issues raised above and making it clear that failure to attend the next CMD or provide adequate information in writing may lead to dismissal of the application.

3. Service of the application upon the Respondent was returned by Royal mail. The Applicant was asked to provide an address or apply for Service by Advertisement. The Applicant responded by email of 3 September 2020 with an application for Service by

Advertisement. The Tribunal responded by email of 9 September in the following terms:

“Your application for service by advertisement has been referred to a legal member. The legal member requests further information from you as follows:

Please submit evidence of the steps you have taken to ascertain the landlord’s whereabouts such as instructing sheriff officers to do a trace.

Please provide the information requested within 14 days by 23rd September 2020 failing which your application may be refused. “

4. The Tribunal wrote again by email of 16 September 2020 in the following terms:

“Good afternoon,

Further to my below email, please be advised, a legal member has looked at your service by advertisement application together with your recent email advising that you had contacted the citizens advice bureau before making this application. She considers that you have not yet provided any evidence which shows that you have attempted to obtain an address for the landlord.

She advises that she is not prepared to grant your request to serve the application by advertisement until you provide evidence showing what attempts you have made and confirming the outcome of those attempts.

Evidence showing that you have attempted to obtain an address for the respondent, would include correspondence from sheriff officers or tracing agents (who you have instructed) setting out their attempts to find the landlord.

Your application will be put on hold until you advise the tribunal what efforts you have made to find the landlord and provide evidence in support of those efforts.”

No response was received so the Tribunal emailed again on 15 October 2020 in the following terms:

“Good evening,

I am emailing in regards to the above application for the above property and your recent request for service by advertisement.

Despite two requests you have failed to provide the required evidence for your service by advertisement application. Please find attached landlord registration information which appears to relate to the property which is the subject of the application. You may wish to contact Glasgow City Council landlord registration section to verify this information. If they are able to confirm the contact details relate to the Respondent, this may be acceptable as evidence of the current address. If not, you must provide a trace report from a tracing agent or Sheriff Officer. Please do this within 14 days, or the application is likely to be refused.

Please respond to the above by 29th November 2020. “

No response was received so the Tribunal emailed again on 10 December 2020 in the following terms:

“Good morning,

I am emailing in respect of the above application and your request for service by advertisement.

Your application has been referred to a Legal member of the Tribunal. The Legal Member notes that you have failed to provide the information requested in the Tribunal’s emails to you of 16 September and 15 October.

The Tribunal orders you to provide the information requested by 24 December 2020. If you fail to do so then the Tribunal may dismiss your application in terms of Rule 27(2)(a) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. “

No response was received.

Reasons for Decision

5. The Tribunal considered the application in terms of Rule 27(2)(a) of the Chamber Procedural Rules. That Rule provides:-

*" (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;"*

6. The Applicant has failed to comply with the Tribunal’s Order of 10 December 2020. The Applicant was on notice that failure to comply with the Order could lead to dismissal of the proceedings by the email of 10 December 2020. The Tribunal accordingly determined that the application be dismissed. Dismissal is in accordance with the overriding objective and in the interests of justice.

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

6 January 2021

Legal Member/Chair

Date