

Housing and Property Chamber
First-tier Tribunal for Scotland



Notes on a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57 (2) of the Housing (Scotland) Act 2006.

Chamber Ref: FTS/HPC/PR/20/1861

Re: Property at 36 Glebe Road, Whitburn, EH47 0BA (“the Property”)

Parties:

Almond Valley Property Centre, 7-8 Inchwood Park, Bathgate, EH48 2FY (“the Applicant”)

Mr Gavin Reid, 36 Glebe Road, Whitburn, EH47 0BA (“the Respondent”)

Tribunal Member:

Andrew McLaughlin (Legal Member)

Background.

The Application is in respect of s 57 (2) of the Housing (Scotland) Act 2006 and the order sought in the Application is an order for “*Access for the owner and necessary trades to confirm and repair issues*”.

The Conference call.

The Application was served on the Respondent by Sheriff Officers on 23 October 2020 and was intimated in writing to the Applicant by the Tribunal by letter dated 21 October 2020. Both parties were informed of the means by which they should join the conference call assigned today to hear the Application.

The Case Management Discussion commenced at the appointed time of 2pm on 24 November 2020. By 2.15pm neither party had joined the conference call. The Tribunal brought the Case Management Discussion to an end.

The Legislation.

The Tribunal noted the terms of s57 (2) of the said Act:

s57 Obstructions etc.

(1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under this Part required, authorised or entitled to do.

(2) Where this section applies, the [relevant authority] may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—

(a) complying with any requirement imposed by or under this Part, or

(b) doing anything which that other person is by or under this Part authorised or entitled to do.

(2A) In subsection (2), the relevant authority is—

(a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,

(b) in any other case, the sheriff.

(3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) This section does not apply in relation to rights conferred by Part 9 (except the right conferred by section 181(4)(a)).

The Tribunal noted the reference in s57 (1) to “*after receiving notice of the intended action.*”

From having considered the Application, it was not apparent how this obligation had been satisfied as there was no correspondence or other documents supplied with the Application that suggested that the Respondent had “received notice of the intended action” as required.

Similarly, the Tribunal considered that the proposed wording of the order sought was sufficiently vague to make it impossible to adequately frame an order that might satisfy the demands of s57 (2) and provide a clear order setting out what the Respondent was required to do.

Having noted these matters and further considering that both parties had failed to attend the Case Management Discussion, the Tribunal determined to refuse the Application.

Outcome

The Tribunal refused the Application.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

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.

A McLaughlin

24 November 2020

Legal Member/Chair

Date