



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/0673

Re: Property at 30 Easter Drylaw Bank, Edinburgh, EH4 2QN (“the Property”)

Parties:

Miss Lisim Iskandar Tai, 17 Parklands, Lynwood Road, Redhill, RH1 2JF (“the Applicant”)

Mr Lukasz Stadnicki, 73/2 Crewe Road North, Edinburgh, EH5 2NG (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Applicant)

At the Hearing on 22 August 2022 which took place by telephone conference the Respondent was in attendance. The Applicant was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the Hearing and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the Hearing the Tribunal had received an email from the Respondent dated 9 June 2022 with a copy of the Private Residential Tenancy Agreement between him and Miss Ji-Eun Lee dated 10 October 2021.

There had been no communications from the Applicant subsequent to the Case Management Discussion (“CMD”) on 31 May 2022. There was no explanation for the Applicant’s non-attendance at the Hearing.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-

In light of the Applicant's non-attendance without explanation, the application should be dismissed.

The Applicant had not lodged any additional documents for the hearing subsequent to the CMD. The Applicant had not lodged any list of witnesses and had not been in communication with the Tribunal.

The Tribunal waited until 10.10am on 22 August 2022 before starting the Hearing to give the Applicant the opportunity to dial in late. She failed to do so and had not dialled in by the time the Hearing concluded at 10.35am.

Expenses

In light of the Tribunal's decision to dismiss the application the Respondent sought an award of expenses against the Applicant in terms of Rule 40 of the Rules which states:-

"(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.

The Respondent submitted:-

- That on receipt of the application he required to take 2 days off work to complete the paperwork required in connection therewith.
- That he was very stressed.
- That he is a hair stylist and works for himself, owning his own studio.
- That he could not work when under stress and did not want to pass on such "vibes" to his clients.
- That he had lost £300 earnings for the 2 days that he could not work.

After a brief adjournment the Respondent advised that having consulted his online booking system in fact he was unable to work on 3 days being 26 and 29 April and 1 May.

The Tribunal carefully considered the Respondent's request that an award of expenses be made in his favour. The Tribunal could not take into account any stress caused to the Respondent as a result of the application. The initial stages of the application up to and including the CMD were conducted by the Applicant reasonably.

However, the Tribunal took the view that the Applicant's conduct in simply not attending the Hearing without advising the Tribunal or the Respondent that she did not intend to proceed with her application amounted to unreasonable behaviour in the conduct of the case and that behaviour had put the Respondent to unnecessary and unreasonable expense in preparing for and attending the Hearing. To that

extent the Tribunal was prepared to make an award of expenses in favour of the Respondent in terms of Rule 40.

Decision

The Tribunal :-

1. Dismissed the application, and
2. Awarded against the Applicant in favour of the Respondent in terms of Rule 40 of the Rules the expenses of the Respondent's preparation for and attendance at the Hearing on 22 August 2022 all as may be taxed by the Auditor of the Court of Session.

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.

Gillian Buchanan

Legal Member/Chair

22 August 2022
Date