



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/18/0378

Re: Property at Flat 3/1, 101 Battlefield Avenue, Glasgow, G42 9RH (“the Property”)

Parties:

Mr Shaun Leslie, Ms Precious Reddick, 1/1, 5 Espedair Street, Paisley, PA2 6NT; 1/1 5 Espedair Street, Paisley, PA2 6NT (“the Applicant”)

Ms Rita Stewart, 18 Hyndland Road, Hyndland, Glasgow, G12 9UP (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of both the applicant and the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for recall is refused and the original decision to dismiss the Application remains.

- **Background**

The Applicant’s lodged an application on 24th February seeking an order for payment in relation to the alleged failure of the Respondent as Landlord to lodge the deposit in a tenancy deposit scheme in breach of Regulation 3 of the Tenancy Deposit Scheme (Scotland) Regulations 2011(the Regulations), all in relation to their tenancy of the Property from the Respondent.

A Case Management Discussion was scheduled for 2nd July 2018 and both the Applicant and Respondent were notified by letter dated 9th May 2018 of the details of where and when the CMD was taking place, namely in Glasgow Tribunal Centre at 10am on 2nd July 2018. Both Applicant and Respondent were advised they were required to attend the hearing.

Neither party attended the CMD on 2nd July and the application was dismissed by the Convener and a written decision was issued confirming the reasons for the dismissal. The reasons were that the Tribunal were not able to determine the proceedings without a hearing as that was contrary to the interests of the parties, it was not known if the Applicant wished to insist on the Application and in terms of Rule 27 of the Tribunal's rules the Applicant had failed to co-operate with the Tribunal to such an extent that the Tribunal could not deal with the Application justly and fairly.

The decision to dismiss was issued to both parties on the 2nd July and the parties were advised that an application to recall, review or seek permission to appeal the decision could be made. In particular the letter clearly advised that an application to recall should be made within 14 days of the date of the letter advising of the decision and that this time period could only be extended where cause was shown to the Tribunal.

By e-mail dated 25th July Mr Shaun Leslie one of the Applicants wrote to the Tribunal requesting a recall of the decision and advising that he and his partner and co-applicant had been advised by one of the Tribunal staff that "I was to ascertain whether my precious landlord was in the country and to notify yourselves so she could be served before a tribunal would proceed. This is the reason my partner and I did not appear at the tribunal." Mr Leslie then requested a new tribunal and said they would make every effort to attend.

A convener considered the request and determined by a decision dated 2nd August 2018 that a CMD should be fixed to consider whether to recall the decision

By letter dated 10th September both Applicants were advised that the CMD to consider the recall and the case would call on 18th October at 10am in the Glasgow Tribunal Centres, Room 111, 20 York Street, Glasgow G2 8GT. Both were advised they were required to attend.

The Respondent was also served with the letter advising of the new CMD. This was served by Sheriff Officers by means of letterbox service at her proper address.

The Respondent sent a written response dated 28th September and received by the Tribunal office on 2nd October, saying she would not be able to attend the hearing on 18th October due to the fact she would be abroad. A copy of the letter from the Respondent was sent to the Applicants by post and e-mail on 2nd October 2018, along with further confirmation of the date of the CMD.

The Hearing

Neither party attended the CMD today, although the Respondent had intimated she would not be attending and has made written submissions.

FINDINGS IN FACT

1. The Applicants failed to attend the first CMD and the case was dismissed on 2nd July.

2. The Applicants applied for a recall of that decision on 25th July but outwith the 14 days in terms of the Rules.
3. Both Applicant and Respondent were served with proper notice of the next CMD to consider the recall. Both were advised in the notice that they would be required to attend.
4. The Respondent sent a written response dated 28th September and received by the Tribunal office on 2nd October, saying she would not be able to attend the hearing on 18th October due to the fact she would be abroad.
5. A copy of the letter from the Respondent was sent to the Applicants by post and e-mail on 2nd October 2018, along with further confirmation of the date and time of the CMD hearing to take place on 18th October.
6. Neither Mr Leslie nor Ms Reddick (the Applicants) attended the CMD today.
7. There was no written submission from the Applicants nor any explanation of why they did not attend or any request for a postponement.

Reasons for Decision

The Purpose of the CMD today was:

- i. to firstly consider if there was cause shown to allow the time limit for asking for the recall to be extended
- ii. and secondly to consider whether it would be in the interests of justice to allow the recall all in terms of Rule 30 of the Rules.

As neither Applicant attended the CMD the Tribunal has no submissions on which to consider whether the request should be allowed late or whether it would be in the interests of justice to allow the recall.

The Applicants have once again failed to attend. In their absence the Tribunal has no information on which to make a decision and therefor refuses to grant the recall.

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.

Jan Todd

Legal Member/Chair

18th October 2018
Date