

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 27 of the First-tier (Housing and Property) Procedural Rules 2017

Chamber Ref: FTS/HPC/PR/19/3186

Re: Property at 17 Spital, Aberdeen, AB24 3HT (“the Property”)

Parties:

Miss Somer Little, residing at 13 Orchard Road, Aberdeen, AB24 3DP (“the Applicant”)

Comper and Company Ltd, 10 Rubislaw Den North, Aberdeen, AB25 4AN (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application.

Background

- 1 By application dated 4 October 2019 the Applicant sought an order for payment as a result of the Respondent's failure to lodge her deposit with an approved tenancy deposit scheme within the statutory timescales.
- 2 By Notice of Acceptance of Application dated 21st October 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 11 December 2019.
- 3 On 28th November 2019 the Applicant emailed the Tribunal to advise that she may be unable to attend the Case Management Discussion due to work commitments, in which case she would send Mr Jacob Voegele to represent her.

- 4 A copy of the application paperwork together with the date, time and location of the Case Management Discussion was served at the Respondent's registered office by Sheriff Officers on 2 December 2019.
- 5 The first Case Management Discussion took place on 11th December 2019. Neither party was present, nor represented. The Tribunal therefore determined to adjourn the Case Management Discussion to a further date, in order to ascertain whether the Applicant wished to proceed with the application. It subsequently transpired that the Applicant had emailed the Tribunal the night before the Case Management Discussion to advise that neither she nor Mr Voegelé would be in attendance. This email had not been before the Tribunal at the Case Management Discussion.
- 6 A further Case Management Discussion was assigned for 27th January 2020. Both parties were advised of this by email. The Applicant subsequently requested that conference call facilities be made available due to her being out of the country until September 2020 at the earliest. On 30th December 2019 the Tribunal emailed the Applicant confirming that the request for participation for conference call had been granted. The Applicant was provided with the relevant telephone number and code to enable her to participate in the call.
- 7 The second Case Management Discussion took place on 27th January 2019. Mrs Breidge McKeever appeared on behalf of the Respondent. She confirmed that she had not been in attendance at the first Case Management Discussion as she had not received the application paperwork. The first she became aware was when she received the email regarding the postponed Case Management Discussion.
- 8 The Tribunal established the conference call facility however the Applicant failed to join at the designated time. The Tribunal received no further contact from her either prior to or during the Case Management Discussion. Attempts were made to contact her using the mobile number provided however it was not in service. Having been satisfied that the Applicant had received notice of the Case Management Discussion the Legal Member determined to proceed in her absence.

Reasons for Decision

- 9 The Legal Member noted that there had been no request from the Applicant for a further postponement of the Case Management Discussion, nor had there been any contact from her to advise that she would be unable to participate. Indeed the Tribunal had taken all steps to facilitate the Applicant's attendance by allowing her to participate by conference call. The Legal Member noted that she had been in contact with the Tribunal by email and had been aware of the date and time of the Case Management Discussion.

She also had the relevant details to enable her to participate in the conference call. The Legal Member was therefore satisfied that she was aware of the proceedings and had been given the opportunity to attend the Case Management Discussion.

- 10 The Legal Member was therefore of the view that the process to date had been fair. The Applicant had been given clear guidance in the communications from the Tribunal that preceded the Case Management Discussion. She had been advised that she was required to attend the Case Management Discussion and she had been given the opportunity to do so by via conference call. The Legal Member considered a further adjournment of the Case Management Discussion, however in the absence of any explicit postponement request from the Applicant she concluded it would be unreasonable to expect the Respondent to incur any further undue delay or inconvenience in attending a further Case Management Discussion. The Legal Member further noted that this was the second Case Management Discussion, the first having been adjourned to a lack of attendance by the parties.
- 11 The Legal Member therefore considered in terms of Rule 27 of the First-tier Tribunal (Housing and Property Chamber) Procedural Rules 2017 that in view of the failure of the Applicant to cooperate in attending or being represented at the Case Management Discussion it would be fair and proportionate to dismiss the application.

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.

R O'Hare

Legal Member/Chair

27/1/20

Date