



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 103 of First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/18/3385

Re: Property at 14C Killin Avenue, Dundee, DD3 6ED (“the Property”)

Parties:

Mr Alexander Goff, 15D Hindmarsh Avenue, Dundee, DD3 7LT (“the Applicant”) per his agents Shelter Scotland having a place of business at Dundee Advice Service, 4 South Ward Road, Dundee, DD1 1PN (“the Applicant’s Agents”)

Carling Properties, 22 Whitehall Crescent, Dundee, DD1 4AU (“the Respondent”) per its agents, BTO, solicitors, 48 St. Vincent Street, Glasgow, G2 5HS (“the Respondent’s Agents) together referred to as the “Parties”

Tribunal Members:

Karen Moore (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be dismissed in terms of Rule 27 of the Rules and that expenses as taxed be awarded in terms of Rule 40 of the Rules.

Background

1. By application received on 12 December 2018 (“the Application”), the Applicant’s Agent, on behalf of the Applicant, made an application to the Tribunal for an order in terms of Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) that the Respondent had failed to comply with Regulation 9 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the Regulations”).
2. On 17 January 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management

Discussion ("CMD") was fixed for and took place on 26 February 2019 at 10.00. The Applicant, his partner Ms. Webster being a supporter in terms of Rule 10 of the Rules, the Applicant's Agents and Mr. G, Carling of the Respondent were present.

3. In terms of Rule 17 of the Rules, the matters identified as matters in dispute at the CMD were:-
 - i. How much of a deposit had been paid;
 - ii. How much of a deposit if any had been refunded;
 - iii. Is the Application time-barred in terms of Regulation 9(2) of the Regulations;
 - iv. Does the Tribunal have jurisdiction in respect of an approved scheme in terms of the Regulations and
 - v. Is the Applicant entitled to an Order in terms of the Regulations?
4. As there were matters in dispute, a Hearing was fixed for 16 April 2019 and later postponed to 16 May 2019 at 10.00 at Hilltown Community Centre, 15 Alexander Street, Dundee DD3 7UN.
5. The Parties lodged written representations which were copied to each other.

Hearing

6. The Hearing took place on 16 May 2019 at 10.00 at Hilltown Community Centre, 15 Alexander Street, Dundee DD3 7UN. The Applicant, his partner Ms. Webster being a supporter in terms of Rule 10 of the Rules and Ms Linda Bulle of the Applicant's Agents were present. The Respondent was represented by Mr. M Onorati of the Respondent's Agents. Ms. Herd of the Respondent attended as an observer.
7. The Tribunal, having regard to the Rules and Regulations advised the Parties that the first matter for its consideration was jurisdiction and that it would deal with this matter as a preliminary matter before hearing evidence.
8. The Tribunal noted from the CMD notes that the Parties agreed that the tenancy ended on 20 August 2018 and noted that the Application was lodged on 12 December 2018. The Tribunal referred the Parties to Regulation 9 (2) of the Regulations which states that an application "must be made no later than 3 months after the tenancy has ended". The Tribunal advised the Parties that in its view this time scale is mandatory and it has no discretion. The Parties agreed.
9. The Tribunal then had regard to Rule 27 of the Rules which state that if the Tribunal has no jurisdiction it must dismiss the Application.
10. The Tribunal referred to the Applicant's position that the Tribunal has jurisdiction in terms of the Regulations to interfere in the decisions and process of an approved scheme and to reverse the approved scheme decision. The Tribunal advised the Parties that, in its opinion, it had no jurisdiction, and invited the Applicant's Agent to comment on this. The Applicant's Agent was not able to point the Tribunal to jurisdiction in this regard.

11. Accordingly, the Tribunal, having no jurisdiction, was obliged to dismiss the Application in terms of Rule 27.

Motion for Expenses

12. Mr. Onorati moved for expenses in terms of Rule 40 of the Rules and advised the Tribunal that the likelihood of this motion had been intimated to the Applicant's Agents. Mr. Onorati explained to the Tribunal that the Respondent had been put to unnecessary or unreasonable expense due to the unreasonable conduct of or on behalf of the Applicant. Mr. Onorati explained to the Tribunal that the Applicant's Agents had been contacted by the Respondent's Agents to withdraw the Application as it was time-barred and that an offer to settle the Application had been made.

13. Ms. Bulle agreed that there had been contact and that an offer of £130.00 to settle had been made by the Respondent but that this had been rejected by or on behalf of the Applicant. Ms. Bulle explained to the Tribunal that the senior management of the Applicant's Agents had been made aware of the Respondent's position on expenses and are in the process of considering this.

14. The Tribunal adjourned to consider the motion. The Tribunal had regard to the whole matter and, whilst it had sympathy for the personal predicament of the Applicant, took the view that the conduct of the Applicant's Agents on his behalf was so misconceived and without merit that an award of expenses should be made. Accordingly, the Tribunal exercised its discretion and awarded expenses as taxed in terms of Rule 40.

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.

K Moore

Legal Member/Chair

16 May 2013

Date