

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 Section 36 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/PR/19/0094

**Re: Property at 37 Shore Street, Macduff, Aberdeenshire, AB44 1TS (“the
Property”)**

Parties:

**Dr Michael Bardill, 6 Walker Court, Cornhill Road, Aberchirder, Huntly,
Aberdeenshire, AB54 7SD (“the Applicant”)**

**Ms Susie Seui, The Bayview, 37 Shore Street, Macduff, Aberdeenshire, AB44
1TS (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 69 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the amended sum of £5,000 for damages for unlawful eviction in terms of section 36 of the Housing (Scotland) Act 1988.
2. There had been two previous case management discussions, 8 April 2019, and 27 January 2020. Reference is made to the terms of those case management discussion notes.
3. Notice of today’s case management discussion had been sent to the parties by letter dated 30 January 2020. The discussion took place by telephone conference call. There was no appearance by the applicant at today’s case management

discussion. The respondent's agent Ms Hill, from Messrs' Paris Steele WS attended today's telephone case management discussion.

Discussion

4. A notice of direction had been issued at the last case management discussion, it provided that the applicant was required to provide on or before 21 February 2020 written specification as to how the damages claim has been valued having regard to the terms of section 37 of the Housing (Scotland) Act 2019. The direction had not been complied with.
5. The respondent's agent moved that I should dismiss the application. She submitted that the application was made under rule 69 of the 2017 Rules. The application had been made in January 2019, 14 months ago, and there was still no specification of the value of the claim provided by the applicant. She asked that the case be dismissed in terms of rule 27 of the 2017 Rules. She also submitted that the applicant had not complied with the notice of direction issued on 27 January 2020 and that this was the third notice of direction that had not been complied with by the applicant.
6. The respondent's agent also moved that expenses be awarded against the applicant. She submitted that it was reasonable to award expenses due to the time that this application had been going on for. She acknowledged that there had been some delay due to, on-going criminal proceedings involving her client and issues regarding the health of one of the respondent's witnesses. She submitted however, that the applicant had failed to comply with the three notices of directions and it would be reasonable to award expenses in those circumstances.

Reasons for Decision

7. Rule 27(2) of the Tribunal Rules 2017 provides that
 - (2) *The First Tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to -*
 - (a) *Comply with an order which stated that failure by the applicant to comply with the order could lead to the dismissal of the proceedings or part of them; or*
 - (b) *Co-operate with the First Tier Tribunal to such an extent that the First Tier Tribunal cannot deal with the proceedings justly and fairly.*
8. I am prepared to dismiss this application. I consider that the failure by the application to take part in today's telephone case conference, together with his failure to comply with the notice of direction allows me to do so in terms of rule 27(2)(b). I have also placed weight on the fact that this is the third notice in which

that the applicant has been directed to produce valuation information, as required by section 37 of the Housing (Scotland) Act 1988. No valuation information has been provided by the applicant. This application has been in process for around 14 months. Since the 27 January of 2020 there has been no contact by the applicant with the tribunal office, providing any reason why valuation information would not be forthcoming within the time period specified. There was also no contact by the applicant to the tribunal office seeking to postpone today's discussion. I consider that having regard to all of these factors that I should dismiss the Applicant's application.

9. Turning to the motion for expenses. Expenses are governed by rule 40 of the 2017 Rules. The 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 the case has put the other party to unnecessary or unreasonable expense.
10. This application has been on-going some time, however not all of the delay has been due to the applicant. The application had to be postponed given outstanding criminal proceedings involving the respondent and having regard to the health of one of the respondent's witnesses.
11. I accept that there have been three notices of directions and that they have not been complied with. However, it is relevant to recognise that the first notice of direction had a number of points to be addressed, and all but one, the valuation information, was addressed by the applicant. I understand that there had been difficulties in obtaining access to the property early in the application's history.
12. The application has involved three case management discussions and the applicant took part in the first two. There does not appear to have been any unreasonable behaviour in the terms of the first case management discussion in April 2019. The second took place in January 2020 some 8 months after the April 2019 case management discussion, the delay in this discussion had not been wholly due to the conduct of the applicant, but had also been due to the Respondent as set out above. Between April 2019 and January 2020 the applicant's solicitor advised that he was no longer instructed in this application. The applicant was therefore unrepresented at the January discussion. I do not consider that the conduct of the applicant was unreasonable at the January discussion, and he also no longer had the benefit of legal advice to assist him in dealing with his application. The material matter which was not dealt with has been the production of valuation information. The January discussion continued consideration of the application to today's further case management discussion for the production of the valuation report. This has not been forthcoming. While I recognise that the production of the valuation report did cause some delay in the proceedings, I do not consider that the applicant's behaviour has been

unreasonable in the conduct of the case, such that expenses should be awarded against him.

Decision

13. I dismiss the application. I refuse to make an award of expenses against the Applicant.

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.

M. Barbour

Legal Member/Chair

4.3.2020

Date