



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/21/0580

Re: Property at 2 West Pilton Bank, Edinburgh, EH4 4HW (“the Property”)

Parties:

Ms Ami Elena Ionescu, 128 Bradfield Drive, Barking, IG11 9AS (“the Applicant”)

**Mr David Grant Marcus, Hawthorn Cottage, High Street, Ayton, Eyemouth,
Berwickshire, TD14 5QW (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member)

Decision (in absence of the Applicant)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be dismissed.**

Background

The Applicant lodged an application on 21st April 2021 under Rule 87 (8) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking an order for repayment of an unlawful premium.

Lodged with the application were: -

1. The Tenancy Agreement
2. Proof of Payment
3. Screen prints

The papers were served on the Respondent by Sheriff Officer on 17th May 2021.

The Respondent lodged a written response and a number of documents on 8th and 9th June 2021.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Respondent dialled in. The Applicant did not dial in, and neither did any representative on her behalf.

The Tribunal decided that due to the lack of participation by the Applicant the CMD would need to be adjourned to a later date. The Tribunal was not satisfied that the Applicant was aware of the hearing. The Applicant had sent her application from a different email address from the one given on the application form. There had also been a change of dial in details and the tribunal was not satisfied that the Applicant had knowledge of the new dial in details.

The case was adjourned to a new CMD on 29th July 2021 at 10am by teleconference.

On 21st June 2021 the Tribunal Administration sent an email, at 2.35pm, to zdevyss@yahoo.co.uk, attaching a copy of the CMD Note. The Applicant responded to the email at 5.17pm confirming that it was her email address and advising that she had not known of the date of the CMD.

On 23rd June 2021 the Tribunal Administration sent an email to the same email address, attaching a copy of the letter to the Applicant giving details and dial in details for the continued CMD, scheduled to take place on 29th July 2021.

Continued Case Management Discussion

The continued CMD took place by teleconference on 29th July 2021 at 10am. The Respondent dialled in before 10am. The Tribunal waited until 10.10am. The Respondent did not dial in, and no representative dialled in on her behalf.

Rule 27 of the Tribunal’s Rules states as follows:

Dismissal of a party’s case

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(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.

The Chairperson was of the view that, given the Applicant had failed to attend on two occasions, in terms of Rule 27 (2)(b) the Applicant had failed to co-operate to the extent that the Tribunal could not deal with the proceedings justly and fairly, and decided to dismiss the Application.

Decision

The Application is dismissed.

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.

A Kelly

29/07/2021

Legal Member/Chair

Date