



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 9 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Reference number: FTS/PR/21/1816

Re: Property at 65A, Ladywell Avenue, Edinburgh, EH12 7LL (“the Property”)

The Parties:

Mr. Aaron Cummings, last known address care of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST and present whereabouts unknown (“the Applicant”)

Mr. Ian Duff residing at 23, Fir Park, Tillicoultry, FK13 6PX (“the Respondent”) per his agent, Mr. Calvin Gordon, Solicitor, McEwan Fraser Legal, Claremont House, 130 East Claremont Street, Edinburgh, EH7 4LB (“the Respondent’s Agent”)

Tribunal Member:

Karen Moore (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be refused.

Background

1. By application received on 28 July 2021 (“the Application”), the Applicant’s then agent, Mr. Ben Christman of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST, applied to the tribunal for an Order in terms of Regulation 10 of the Regulations. The Application comprised a copy emails and text messages between the Parties evidencing a tenancy agreement between them and payment of tenancy deposit by the Applicant to the Respondent.
2. The Applicant’s then agent requested that the Applicant’s address be given on the Application as care of Legal Services Agency, 134, Renfrew Street, Glasgow, G3 6ST on the basis that criminal proceedings may be in progress affecting the Parties and so it was inappropriate that the Applicant’s address be made known. The Application was

accepted by the Tribunal Chamber on that basis and a Case Management Discussion (“the first CMD”) was fixed for 12 October 2021 at 10.00 by telephone conference.

3. Prior to the first CMD, written representations were submitted on behalf of the Respondent.

First Case Management Discussion

1. The first CMD took place on 12 October 2021 at 10.00 by telephone conference. Neither the Applicant nor the Respondent took part. The Applicant was represented by Mr. Christman, his then agent, and the Respondent was represented by his father, Mr. Michael Duff. The discussions at the first CMD raised various preliminary legal matters regarding the Application and the status of the tenancy between the Parties and so was adjourned to 8 December 2021 (“the second CMD”). The tribunal at the first CMD issued a first Direction to the Parties in respect of the information and documentation required to progress consideration of the Application.
2. Prior to the second CMD, Mr. Duff made an application to the tribunal to amend the Respondent’s address to that shown above and to request that the tribunal issue a second Direction in terms of Rule 16 of the Rules to direct the Applicant to disclose his residential address. The tribunal of the first CMD accepted Mr. Duff’s application and directed the Applicant to disclose his address or to submit written representations to respond to the request for disclosure of the address. The Applicant did not comply with the second Direction.

Second Case Management Discussion

3. The second CMD took place on 8 December 2021 at 10.00 by telephone conference. Neither the Applicant nor the Respondent took part. The Applicant was again represented by Mr. Christman, his then agent, and the Respondent was again represented by his father, Mr. Michael Duff. The tribunal of the second CMD was advised that the Respondent had lodged an application to reduce the tenancy between the Parties, which application had not yet been intimated to the Applicant and his then agent. It transpired at the second CMD that the second Direction had not been issued by the Chamber administration.
4. The outcome of the second CMD was that the progress of the Application was adjourned to a further CMD to allow the application for reduction to be progressed and conjoined. The second Direction was revised and re-issued. The second Direction as revised to include a requirement that the Applicant to evidence his allegation of a complaint to Police Scotland and to advise if an application has been made in respect of an alleged lock-change eviction. The second Direction as revised was not complied with.

Third Case Management Discussion

5. The third CMD was fixed for 7 February 2022 at 14.00 by telephone conference. Shortly before the third CMD, Mr. Christman withdrew from acting for the Applicant.

The Tribunal enquired of Mr. Christman if care of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST was still to be used as a contact address for the Applicant. Mr. Christman replied that he no longer acted for the Applicant. Also, shortly before the third CMD, the Tribunal was made aware that the Respondent had lodged two applications arising from the tenancy between the Parties and that Mr. Christman had withdrawn from acting in these applications, also. Therefore, the Tribunal postponed the third CMD to allow the Respondent's applications to be conjoined with the Application and for the Application to progress to a fourth CMD.

6. The Tribunal issued a fourth Direction as follows:-

"1. The Applicant is directed to disclose his address to the Tribunal and the Respondent and the Respondent's Representative, failing which he is directed to submit a list of legal authorities in support of his position that he should not be required to disclose his address in the present proceedings. The said documentation should be lodged with the Tribunal and copied to the other Party no later than close of business on the day which falls fourteen days before the date of the case management discussions to be fixed and intimated to the Parties; and

2. The administration of the First-tier Tribunal for Scotland Housing and Property Chamber is directed to:

(i) to fix a case management discussion in terms of Rule 17 of the Rules for the present proceedings;

(ii) to fix case management discussions in terms of Rule 17 of the Rules for the cases referenced FTS/HPC/CV/21/3151 and FTS/HPC/CV/22/0697 on the same date and at the same time as the case management discussion fixed for these proceedings and

7. to intimate the date of the case management discussions on the Applicant both at his last known care of address and by advertisement on the Chamber's website and on the Respondent and the Respondent's Representative at their address at 23, Fir Park, Tillicoultry, FK13 6PX". The Applicant did not comply with the second Direction.

Fourth Case Management Discussion

8. The fourth CMD was fixed for 29 July 2022 at 10.00 by telephone conference and was intimated to the Applicant at his last known care of address and by advertisement on the Chamber's website.

9. The fourth CMD took place on 29 July 2022 at 10.00 by telephone conference. Neither the Applicant nor the Respondent took part. The Applicant was not represented and had not submitted written representations. The Respondent was represented by Mr. Gordon. The Tribunal, being satisfied that the CMD had been intimated to the Applicant, the Tribunal proceeded with the CMD in his absence.

10. On behalf of the Respondent, Mr. Gordon moved that the Application be dismissed as it did not comply with Rule 103 of the Rules, all as set in full in the written representations submitted on behalf of the Respondent some time earlier.

11. Rule 103(a) of the Rules states: *"Where a tenant or former tenant makes an application under regulation 9 (court orders) of the 2011 Regulations, the application*

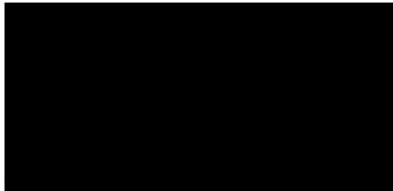
must (a)state (i)the name and address of the tenant or former tenant; (ii)the name, address and profession of any representative of the tenant or former tenant; and (iii)the name, address and registration number (if any) of the landlord". In this case the Application as lodged with tribunal Chamber did not state the name and address of the tenant or former tenant. The Application as it stands at the date of the CMD does not state the name and address of the tenant or former tenant, nor has it stated that address at any time. Therefore, the Application is not an application in terms of Rule 103 and falls to be refused and dismissed on that basis without further procedure.

Decision and Reasons for Decision

12. Having determined that the Application is not an application in terms of Rule 103 and falls to be refused , the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so proceeded 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.



Legal Member/Chair

29 July 2022

Date