



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

Chamber Ref: FTS/HPC/PR/22/0348

Re: Property at 62 Sommerville Street, Burntisland, Fife, KY3 9DH (“the Property”)

Parties:

Mr Robbie McPhail, 1 Lothian Street, Burntisland, Fife, KY3 0BA (“the Applicant”)

Anna-Marie Ashford, 31 Wharton, London, WC1X 9PJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Applicant)

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

- 1** By application to the Tribunal the Applicant sought an order for payment against the Respondent under Regulation 10 of the Tenancy Deposit Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”).
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President determined that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for the 10 May 2022.
- 3** The application paperwork was subsequently served on the Respondent by Sheriff Officers. The Respondent submitted written representations to the Tribunal in response to the application. In summary the Respondent submitted that the property was a short term holiday let and had been occupied by the Applicant on that basis. It was not therefore subject to the 2011 Regulations. The Applicant had agreed to the application of his deposit to outstanding rent.

The Respondent produced excerpt communications between the parties in support of this.

- 4 The Case Management Discussion took place on 10 May 2022 by teleconference. The Respondent was present and accompanied by her representative Mr Gianpaul Becci. The Applicant was not present. The Legal Member noted that he had been given notification of the Case Management Discussion together with joining instructions for the conference call, and that the implications of not attending had been explained to him in said notification. He had not been in touch with the Tribunal to advise of any reason why he would not be attending the Case Management Discussion.

Reasons for Decision

- 5 The Tribunal had cognisance of Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber Procedural Rules 2017. The Applicant had been given the opportunity to attend the Case Management Discussion and had failed to do so. In the absence of the Applicant the Tribunal concluded that it would not be in a position to deal fairly and justly with the application, as it could not confirm his position regarding the matter.
- 6 In the circumstances the Tribunal determined that the proportionate course of action would be to dismiss the application under Rule 27. In reaching its decision the Tribunal noted that it would be open to the Applicant to seek a review of the Tribunal's decision in the event that he wished to continue with his 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

10/05/2022

Legal Member/Chair

Date