



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/22/1353

Re: Property at 4/8 Hopetoun Street, Edinburgh, EH7 4ND (“the Property”)

Parties:

Miss YUANYUAN Liu, 7/4 Brighton Street, Edinburgh, EH1 1HD (“the Applicant”)

Mrs Mei Ni, 12 Ramage Marches, Haddington, EH41 3DW (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

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

Background

1. This application for sanction of a landlord for alleged failure to comply with the duties in terms of Regulation 3 of the 2011 Regulations first called for a case management discussion by teleconference on 14th October 2022 at 1130 am having been postponed from 9th September 2022. There was no attendance by or on behalf of the Applicant at the case management discussion on 14th October 2022, but the Respondent was in attendance and represented herself.

2. The Applicant had received notification of the case management discussion and in the letter to the Applicant for the case management discussion on 9th September 2022 she was advised that she required to take part in the discussion and that failure to take part would not stop a decision being made if the Tribunal considered it fair to do so and had sufficient information. No contact was received from the Applicant before the case management discussion on 14th October 2022 to suggest there was any issue with her attending the case management discussion on that date.

3.The application had first been received by the Tribunal on 10th May 2022.By letters of 13th and 31st May 2022 and 17th June 2022 the Tribunal requested further information from the Applicant in relation to the application, but no reply was received to any of these requests.

4.On 4th July 2022 the Tribunal issued a Direction to the Applicant requiring her to send information to the Tribunal.

5.No response was received from the Applicant to the Direction and no contact was received from her at all in response to requests for information or as regards her intentions as regards the application.

Case management Discussion 14th October 2022

6.The Applicant was notified of the case management discussion on 14th October 2022 at 10am but neither attended nor was represented. There was no contact from the Applicant to suggest that she had any issue with attending the case management discussion on this date. The Respondent attended and asked that the application be dismissed.

7.The Tribunal considered the application at the case management discussion on 14th October 2022. In order for an application to proceed the Tribunal requires an Applicant to attend or be represented at hearings in order to make progress with an application. The Applicant had been advised of both case management discussions and warned that if she failed to take part that an order could be made in her absence. Further the Tribunal had issued a Direction to the Applicant which had not been complied with at all.

8.The Tribunal considered Rule 27(2) of the First Tier Tribunal (Housing and Property Chamber Rules of Procedure 2017 which states :-

(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.

9.In the circumstances of this application the Tribunal was satisfied that both subsections of Rule 27(2) are engaged in that the Applicant was warned about the possible effects of not attending a case management discussion and the Applicant

also failed to cooperate with the Tribunal and did not respond to a Direction of the Tribunal or attend a case management discussion of which notice had been given. Without the Applicant in attendance the Tribunal could not deal with the application justly and fairly and could not make progress with it. The Applicant was not present to insist on the application and her intentions are unknown.

Statement of Reasons

10. The Tribunal dismissed the application for want of insistence given the Applicant's failure to attend a case management discussion of which she had notice and her failure to cooperate with the Tribunal in terms of requests for information and the issue of a Direction, all of which meant that the Tribunal could not deal with the Application justly and fairly, all in terms of Rule 27(2) of the First Tier Tribunal Housing and Property Chamber Rules of Procedure 2017.

Decision

The Tribunal dismissed the application for want of insistence.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Valerie Bremner

Legal Member/Chair

14.10.22
Date