



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 57(2) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/PR/22/1241

Re: Property at 271H Blackness Road, Dundee, DD2 1RY (“the Property”)

Parties:

Miss Joy Watters, 1 Left, 293 Blackness Road, Dundee, DD2 1SA (“the Applicant”)

Mr Graham Henderson, 34 Edzell Street, Broughty Ferry, Dundee, DD5 3JJ (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should remove all items hanging on the kitchen walls of the property, including shelving.

Background

1. The Applicant submitted an application under Rule 49 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to direct the Respondent to remove certain items from the property to enable an inspection to be carried out.
2. By decision dated 19 May 2022, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion.
3. The Notice of Acceptance was intimated to the Applicant’s representative on 23 May 2022. The Tribunal intimated the application to the parties by letter of 25 May 2022 and advised them of the date, time and conference call details of a case management discussion assigned for 30 June 2022. In that letter, the

parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 15 June 2022. No written representations were received by the Tribunal.

4. The Applicant's representative lodged written submissions on 21 June and 5 August 2022.
5. On 24 June 2022, the Respondent sent an email to the Tribunal requesting a postponement of the case management discussion. He advised that he was represented by Dundee Law Centre and the first available appointment was 27 June. On 27 June the Tribunal granted the postponement request.
6. On 30 June 2022, the Tribunal received a letter from the Respondent's representative advising that they had been instructed and providing a note of dates to avoid for any new case management discussion.
7. On 1 July 2022, the Tribunal wrote to both parties intimating the date, time and conference call details of a case management discussion on 21 July 2022. The Tribunal wrote to both parties' representatives acknowledging that 21 July was listed as one of the dates the Respondent's representative asked to avoid. Parties' representatives thereafter provided a further note of dates to be avoided.
8. On 13 July 2022, the Tribunal postponed the case management discussion. On 15 July 2022, the Tribunal wrote to parties' representatives intimating the date, time and conference call details of a case management discussion on 12 August 2022.
9. On 15 July 2022, the Applicant's representative lodged medical evidence in respect of the Applicant.
10. On 11 August 2022, the Tribunal received a letter from the Respondent's representative intimating their withdrawal from acting and indicated that the reason for withdrawal was the lack of instruction. On the same date, the Respondent requested a postponement of the case management discussion. Parties were told that the Tribunal would hear submissions on the postponement request as a preliminary matter on 12 August 2022.

The case management discussion

11. The case management discussion took place by conference call. This case called alongside a related case which proceeds under chamber reference FTS/HPC/EV/21/0703. Both parties were personally present and the Applicant was represented by Miss Kelly. Parties were invited to address the Tribunal on the Respondent's postponement request. The Respondent explained that he

had suffered from a number of medical conditions and that had caused a delay in him instructing his solicitor. The application to postpone the case management discussion was opposed. The Applicant's representative explained that the Applicant was fully prepared. The case management discussion had been postponed on 2 occasions already. The Applicant's representative sent a letter to the Respondent by sheriff officer in October 2021 suggesting that he should seek legal advice. It was submitted that both parties had the same opportunities to instruct representatives and prepare for the case management discussion. It was observed by the Applicant's representative that no medical evidence had been lodged to suggest that the Respondent's ability to participate in the case management discussion was impaired. It was also submitted that the Applicant's health had suffered as a result of the delay in these proceedings. The Tribunal considered the submissions made by both parties and refused the postponement request. The Tribunal explained the purpose of the case management discussion and noted that both parties were present and in a position to assist the Tribunal in identifying whether there were any disputed facts.

12. The Tribunal heard from the Respondent. He indicated that he has no difficulty in allowing access to the property for inspections to be carried out. The Tribunal indicated that, within the papers, was a copy of an email sent to him by the Applicant on 7 April 2022, giving notice of a proposed inspection. The Respondent explained that he did receive that email and intended to respond to allow access, but he forgot to do so.
13. The Tribunal raised with the Applicant's representative the precision of the order being sought. The Tribunal indicated that any order granted must be clear and unequivocal so that it is clear what is required of the Respondent. The Applicant's representative explained that the most pressing issue relates to a proposed inspection of the kitchen because water ingress has been noted. It was submitted that the Respondent requires to remove all items currently hanging on the kitchen walls, including shelving, so that an inspection can be carried out.

Findings in Fact

14. The Respondent entered into an assured tenancy which commenced in or around spring 2011.
15. The Applicant notified the Respondent on 7 April 2022 of an intended inspection of the property. The Respondent failed to allow access to the property for that inspection.

Reason for Decision

16. The Tribunal had regard to the terms of the Housing (Scotland) Act 2006. Section 57 provides:-

(1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under this Part required, authorised or entitled to do.

(2) Where this section applies, the [F1 relevant authority] may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—

(a) complying with any requirement imposed by or under this Part, or

(b) doing anything which that other person is by or under this Part authorised or entitled to do.

[F2(2A) In subsection (2), the relevant authority is—

(a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,

(b) in any other case, the sheriff.]

(3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) This section does not apply in relation to rights conferred by Part 9 (except the right conferred by section 181(4)(a)).

17. The Tribunal found that there was no factual dispute between the parties about any material matters. It concluded therefore that a Hearing was not required.

18. The Respondent accepted that he had not responded to the Applicant's request for access. He also indicated that he has no difficulty in allowing access to enable an inspection to be carried out. Given that water ingress had been reported, it is appropriate that the Applicant is afforded access to enable an inspection to be carried out. The restricted order suggested by the Applicant's representative appeared to be proportionate and unequivocal. The Tribunal was satisfied in the circumstances that an order was appropriate.

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.

N Irvine

Legal Member/Chair

12 August 2022

Date