

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/PR/18/0155**

**Re: Property at 7 Deanfield Crescent, Bo’ness, EH51 0EU (“the Property”)**

**Parties:**

**Miss Denise Taylor and Mr Stephen Fisher, 24 Midfeild Terrace, Steelend, Dunfermline, KY12 9NA  
 (“the Applicants”)**

**Mr Robert Scotland, 70a Stewart Avenue, Bo’ness, EH51 9NW  
 (“the Respondent”)**

**McEwan Fraser Legal, Solicitors and Estate Agents, Claremont House, 130 East Claremont Street, Edinburgh, EH7 4LB  
 (“the Respondent’s Representative”)**

**Tribunal Member:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

**Decision (in absence of the Applicants)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):**

**(1) dismissed the Application under Regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) and Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”) because the Applicants failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly in terms of Rule 27(2)(b) of the 2017 Rules; and**

**(2) reserved the questions of expenses to be determined at a future date and ordered parties by way of a Direction to submit any written representations relative to the Respondent's application for expenses by close of business on 7 December 2018.**

## **1. Procedural background**

- 1.1. On 19 January 2018, the First Applicant made an application ("the Application") to the tribunal.
- 1.2. The First Applicant attached to the Application:
  - 1.2.1. A copy of the Short Assured Tenancy Agreement dated 1 August 2016 between the Applicants and the Respondent in respect of a tenancy of the Property;
  - 1.2.2. A copy of the AT5 form dated 1 August 2016; and
  - 1.2.3. Screen shots of SMS text messages.
- 1.3. On 24 January 2018, as a result of a request by the tribunal, the Applicants provided the Respondent's landlord registration number.
- 1.4. On 8 February 2018 the Application was accepted for determination by the tribunal.
- 1.5. On 22 February 2018, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion had been fixed for 27 March 2018 at 1400h in George House, 126 George Street, Edinburgh. The Respondent was invited to submit any written representations he wished by 12 March 2018.
- 1.6. On 26 February 2018 the Respondent submitted written representations together with copy redacted bank statements and a rent statement for the period 1 August 2016 to 1 December 2017. These were intimated to the Applicants.
- 1.7. On 28 February 2018 the Respondent advised the tribunal that he was unable to attend the CMD on 27 March 2018 due to work commitments. This was treated by the tribunal as a postponement request and the CMD was cancelled and parties were advised that they would be notified of a new date for the CMD.
- 1.8. On 19 April 2018, the tribunal notified the parties a Case Management Discussion had been fixed for 21 May 2018 at 1400h in George House, 126 George Street, Edinburgh. The Respondent was invited to submit any written representations he wished by 14 May 2018.

- 1.9. On 25 April 2018 the Respondent submitted photographs of the Property. These were intimated to the Applicants.
- 1.10. On 11 May 2018 the Respondent submitted written representations. These were intimated to the Applicant.
- 1.11. On 16 May 2018 the Respondent appointed the Respondent's Representative. The Respondent's Representative submitted written representations dated 14 May 2018. These were intimated to the Applicant.
- 1.12. On 21 May 2018, Ms Denise Taylor contacted the tribunal on behalf of the Applicant to advise that he was unable to attend the CMD due to illness.
- 1.13. The CMD took place on 21 May 2018 and reference is made to the Case Management Discussion Note of the same date which was prepared by the Legal Member and circulated to parties after the CMD. It records that the Applicant and Ms Denise Taylor contacted the tribunal on the morning of 21 May to advise that as the Applicant was ill, he was unable to attend. It also records that the Respondent contacted the tribunal on the morning of 21 May 2018 to advise that he was ill and unable to attend but he was represented by Miss Jordan from the Respondent's Representative. The tribunal adjourned the CMD to a date to be advised.
- 1.14. On 21 May 2018 the Respondent submitted written representations with regard to the Applicant's stated reason for being unable to attend the CMD and provided details of the Applicant's employer. These were intimated to the Applicant.
- 1.15. A Direction was issued to parties following the CMD on 21 May 2018, requiring the Applicant to provide specified information to the tribunal no later than 12 noon on 8 June 2018.
- 1.16. On 23 May 2018 the Applicant sent written representations to the tribunal about his failure to attend the CMD on 21 May 2018. These were intimated to the Respondent's Representative.
- 1.17. The tribunal issued a Direction to the Applicant's employer dated 24 May 2018 asking the employer to provide information to the tribunal no later than 15 June 2018.
- 1.18. On 1 June 2018 the Applicant's employer confirmed that the Applicant is employed by them and that he was at work on 21 May, although attended around half an hour to an hour late due to illness. A copy of the letter was intimated to the parties.
- 1.19. On 4 June 2018 the tribunal wrote to the Applicant again requesting proof of payment of the tenancy deposit to the Respondent (which had already formed part of the tribunal's Direction issued to the Applicant).

- 1.20. On 5 June 2018 the Applicant submitted screen shots of SMS messages and circled items on the bank statements which had previously been lodged by the Respondent. A copy was intimated to the Respondent's Representative.
- 1.21. Following an inquiry by the tribunal to the Applicant on 16 May 2018, the Application was amended to include the Second Applicant and on 6 June 2018 the Second Applicant gave permission to the first Applicant to act on her behalf in relation to the matter. This was intimated to the Respondent's Representative.
- 1.22. On 19 June 2018 the Respondent's Representative submitted written representations in which they invited the tribunal to find that the Applicants had not produced probative evidence of payment of the deposit as ordered to do by the tribunal.
- 1.23. Parties were advised that a further CMD would be fixed and that they would be notified of the date, place and time.
- 1.24. On 4 October 2018 the tribunal notified parties that a CMD had been fixed on 24 October 2018 which parties were required to attend. The Respondent was invited to submit any written representations to the Application by 22 October 2018.
- 1.25. On 15 October 2018 the Respondent's Representative sent written representations which attached the letter from the First Applicant's employer dated 1 October 2018. These were intimated to the Applicants.
- 1.26. On 24 October 2018 a CMD took place and reference is made to the Notes on the CMD prepared by the Legal member, dated the same date. There was no appearance for the Applicants. The Respondent was represented by Mr Jamie Miller of the Respondent's Representative. The Applicants were ordered to produce written evidence of any payments made by them to the Respondent in August 2016 and attend at the next CMD and advised that their failure to do so could lead to dismissal of the hearing.
- 1.27. On 26 October, a copy of the CMD note was sent to parties. The copy to the Applicant was sent by recorded delivery letter. However, there is no "track and trace" evidence from Royal Mail that the letter was signed for by the recipient.
- 1.28. On 26 October 2018 the parties were notified by letter of the date, time and place of the next CMD on 28 November 2018 at 1400h at George House, 126 George Street, Edinburgh. That was issued by the tribunal's administration on 7 November 2018 and was signed for on 9 November 2018.
- 1.29. There has been no contact from the Applicants to the tribunal in the period since 24 October 2018. No evidence of payment of deposit has been

submitted by the Applicants as ordered in the tribunal's previous Direction of 21 May 2018 and repeated in the CMD Note from 24 October 2018.

1.30. On 8 November 2018 the Respondent's Representative submitted written representations to the tribunal and enclosed unredacted bank statements for the attention of the legal member assigned to deal with the CMD on the basis that as they contained private and sensitive information about the Respondent's income they should not be intimated to the Applicants. The Respondent's Representative also stated that as there was no date specified for the Applicants to produce written evidence of payment of the deposit, it would be unfair to the Respondent if any such evidence was simply produced at the CMD without the Respondent and his representative having the opportunity to consider them. This information was passed to a legal member of the tribunal and also to the legal member who was assigned the CMD on 28 November 2018.

## **2. CMD – 28 November 2018 at 1400h at George House, 126 George Street, Edinburgh**

2.1. A CMD took place on 28 November 2018.

2.2. There was no appearance by the Applicants and no contact with the tribunal's administration in advance of the CMD in relation to any issue with attendance.

2.3. The Respondent attended accompanied by a supporter (who did not sit in the hearing) and represented by Mr Jamie Miller from the Respondent's Representative.

2.4. The tribunal chair indicated that she was considering dismissal of the Application on the basis of the Notes of the previous CMD and the Direction of the tribunal dated 21 May 2018, which had not been obtempered by the Applicants. The Respondent's Representative was invited to make oral representations.

2.5. The Respondent's Representative invited the tribunal to dismiss the Application on the basis that the Applicants had not attended again and had not produced any evidence of payments despite being directed to do so.

## **3. Reasons**

3.1. The tribunal clerk checked the position with Royal Mail regarding notification of the hearing and the tribunal chair was satisfied on the basis of the information received that as the notification letter was signed for on 9 November 2018 the Applicants had notice of the date, time and place of the CMD and the fact that they were required to attend. In relation to the CMD note of 24 October 2018, the tribunal chair was not satisfied that there was proof that the letter had been signed for. It is therefore possible that the

Applicants were not aware that their failure to attend the CMD and to produce the evidence which they were ordered to produce could lead to dismissal of the action. However, the tribunal had regard to the fact that there was a previous Direction issued to the Applicants ordering them to produce the same information and they had failed to do so. They also failed to appear at the CMD or make any contact with the tribunal despite the notification that they were required to attend.

- 3.2. The Applicants (or one of them) have not appeared at any of the CMDs despite being notified that their attendance is required. The reason stated for non-attendance at the first CMD appears, at best, to be incomplete given that the First Applicant attended work that day, albeit half an hour to one hour late. There is also the possibility that the First Applicant was lying to the tribunal about illness precluding him from attending the CMD.

#### **4. Findings in Fact**

- 4.1. The First Applicant was ordered by Direction of 21 May 2018 to produce specified evidence to the tribunal, which he has failed to do.
- 4.2. The First Applicant did not attend the CMD on 21 May 2018, citing illness as the reason for his inability to attend.
- 4.3. The First Applicant attended his place of employment on 21 May 2018 around half an hour to one hour late and worked his normal shift thereafter.
- 4.4. The Applicants failed to attend the CMD on 24 October 2018 despite being notified that they were required to attend.
- 4.5. The Applicants were notified on 9 November 2018 that a further CMD was fixed on 28 November 2018 and that they were required to attend.
- 4.6. The Applicants failed to attend the CMD on 28 November 2018.
- 4.7. The Applicants have made no contact with the tribunal in relation to any inability to attend the CMD on 28 November 2018.

#### **5. Findings in Fact and Law**

- 5.1. In all of the circumstances as referred to in the findings in fact above, the Applicants have failed to cooperate with the First-tier tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.
- 5.2. The tribunal is therefore dismissing the proceedings in terms of Rule 27(2)(a) of the 2017 Rules.

#### **6. Application for Expenses in terms of Rule 40 of the 2017 Rules**

- 6.1. The Respondent's Representative made an application for expenses in terms of Rule 40 of the 2017 Rules. He made some oral submissions in support of his motion.
- 6.2. The tribunal chair indicated that for reasons of fairness she would invite written representations from the Applicants by means of a Direction which specified a time period for submission of the same; and would also allow the Respondent's Representative to submit any written representations he wished to submit within the same period.
- 6.3. The matter of expenses was reserved to be determined at a future date. It is anticipated that expenses can be dealt with on the basis of any written representations submitted by parties on or before 7 December 2018. A further CMD may be fixed, if required, and notified to parties but the tribunal may determine the matter on the basis of written representations alone without any further oral hearing.

## **7. 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.**

Susanne Tanner

**28 November 2018**

**Susanne L M Tanner Q.C.  
Legal Member/Chair**



## First-tier Tribunal for Scotland (Housing and Property Chamber)

### NOTICE OF DIRECTION:

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”), Schedule 1, Rule 16

The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016

Reference number: FTS/HPC/PR/18/0155

Re: Property at 7 Deanfield Crescent, Bo'ness, EH51 0EU (“the Property”)

### The Parties:

Miss Denise Taylor and Mr Stephen Fisher, 24 Midfeild Terrace, Steelend, Dunfermline, KY12 9NA  
 (“the Applicants”)

Mr Robert Scotland, 70a Stewart Avenue, Bo'ness, EH51 9NW  
 (“the Respondent”)

McEwan Fraser Legal, Solicitors and Estate Agents, Claremont House, 130 East Claremont Street, Edinburgh, EH7 4LB  
 (“the Respondent’s Representative”)

## NOTICE TO THE PARTIES

The tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Applicants and the Respondent as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”):

1. The Respondent or his Representative is required to provide to the First-tier Tribunal for Scotland **no later than close of business on 7 December 2018:**

1.1. Any written representations the Respondent wishes to make in relation to the Respondent’s application for expenses against the Applicants in terms of Rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules which provides as follows:



*40(1) The First-tier Tribunal may award expenses as taxed by the Auditor of Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.*

*(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.*

**2. The Applicants are required to provide to the First-tier Tribunal for Scotland no later than close of business on 7 December 2018:**

2.1. Any written representations the Applicants wish to make in relation to the Respondent's application for expenses against the Applicants in terms of Rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules which provides as follows:

*2.1.1. 40(1) The First-tier Tribunal may award expenses as taxed by the Auditor of Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.*

*2.1.2. (2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.*

**3. The said documentation should be lodged with the tribunal no later than close of business on 7 December 2018. The parties are hereby notified that after that time the tribunal will take a decision in relation to the question of whether to make an award of expenses, after considering any representations submitted; and the tribunal may decide the issue on the basis of written representations alone or may fix an oral hearing on expenses, the date, time and place of which will be notified by the tribunal to parties.**

**4. The parties are hereby given notice of the terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016, which state that in any proceedings before the First-tier Tribunal it is an offence for any person to—**

**a) make a false statement in an application in a case;**

**b) alter, conceal or destroy, or fail to produce, something that is required to be produced in accordance with Tribunal Rules; or**

**c) fail to attend or give evidence, when required to do so in accordance with Tribunal Rules.**

**A person who commits an offence as described above is liable —**

- a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both);
- b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding £5,000 (or both).



**Susanne L. M. Tanner Q.C.**  
Chairperson of the tribunal  
Dated: 28 November 2018



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**Susanne L. M. Tanner Q.C.**  
Chairperson of the tribunal  
Dated: 28 November 2018