



Decision with Statement of Reasons of the First-tier Tribunal for Scotland Housing and Property Chamber under Section 48 of the Housing (Scotland) Act 2014 and Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/LA/22/0182

Re: Property at 30 Meikle Street, Galashiels TD1 1LL (“the Property”)

Parties:

Holly Aiton, 30 Meikle Street, Galashiels TD1 1LL (“the Applicant”)

Orchard & Shipman, Orchard & Shipman House, 1 Progress Business Centre, Whittle Parkway, Slough SL1 6DQ (“the Respondents”)

Tribunal Members:

Steven Quither (Legal Member) and Elaine Munroe (Ordinary Member)

DECISION

The Tribunal dismissed the application in terms of Rule 27(2)(b) of the Rules

1. ISSUES TO BE RESOLVED

This is an application by a tenant to enforce various provisions (20, 26, 90, 91 & 108) of the Letting Agent Code of Practice (“LACP”) arising out of the Respondents’ management of the Property on behalf of the landlord, a Steven Hill.

Prior to a Case Management Discussion (“CMD”) on 30th May 2022, as part of the Tribunal’s preliminary consideration of what issues were outstanding between the parties and what remained to be clarified, it considered written representations from the Respondents submitted on 19th and then again, due to an administrative issue, on 25th, both April 2022 and also the Applicant’s response to these, submitted on 19th May. In the main, the substance of these were timelines of the parties’ recollection of events.

The Tribunal had also asked the Applicant to lodge any Terms of Business letter or suchlike she had received from the Respondents, but she was unable to do so prior to said CMD, since she had meantime vacated the Property for repair work to be carried out.

2. FACTS AGREED BETWEEN THE PARTIES

Due to it requiring to see further documentation before it considered it could properly deal with the application, the Tribunal did not seek at said CMD to ascertain what agreement as to facts there might be between the parties.

3. ISSUES DISCUSSED & ADDRESSED

Both parties were in attendance at said CMD, conducted by teleconference, the Applicant in person and the Respondents represented by Ms. Abbie Jay Cronin. The following issues were discussed and clarified with the Applicant:--

- a) The Applicant confirmed that she was basing her application on Paragraphs 20, 26, 90, 91 & 108 of the LACP, since the Tribunal noted that in an e-mail from her to the Respondents of 14th February 2022, reference had been made to Paragraph 28. The Applicant confirmed this to be erroneous;
- b) She confirmed that Section 6 of her application contained reference to all 5 Paragraphs, in response to a query by the Tribunal about an apparent lack of reference to Paragraphs 26 and 91, subsequently confirmed not to be the case, upon further consideration of the wording and layout of Section 6(b) of the application;
- c) She confirmed she had the relevant Tenancy Agreement and would lodge it just as soon as possible, once she again had access to the Property after completion of the ongoing repair work;
- d) In relation to the parts of her claim under Paragraphs 26 and 90 of the LACP, she would check to see what "written agreement" and "written procedures", respectively, she had received from the Respondents.

On behalf of the Respondents, Ms. Cronin very candidly conceded that, in essence, the Respondents could have done better in keeping the Applicant more fully advised of progress, or lack of it, in relation to the matters she brought to their attention, even if they had been awaiting information and instructions from the landlord. The Respondents had considered bringing their agreement

with the landlord to an end, but had not done so in an effort to avoid leaving the Applicant to deal with the landlord direct. The Tribunal noted and appreciated the candour with which Ms. Cronin made her comments.

4. DOCUMENTS AND OTHER EVIDENCE REQUIRED

The Tribunal considered that it did not have sufficient documentation to enable it to consider the merits of the application today. In particular, without knowing what obligations were incumbent on the parties to the lease in respect of repairs etc., or what the Respondents had undertaken to do in relation to any repair issues advised to them by the Applicant, the Tribunal did not consider it could be fully satisfied as to the extent of any failures by the Respondents of their obligations under the LACP.

Accordingly, having considered all of the information available to it to date, the Tribunal's view was that parties should lodge further documentation, namely:--

- a) The Applicant to lodge her tenancy agreement regarding the Property (presumably in the form of a Private Residential Tenancy Agreement); and
- b) Both parties to lodge any (Paragraph 26) "written agreement" and (Paragraph 90) "written procedures" and/or any other documentation detailing any agreement between them as to the services to be provided by the Respondents for the Applicant, together with any accompanying covering correspondence.

For the avoidance of doubt, the Tribunal issued a Direction regarding these matters.

5. DECISION

In all of the circumstances, the Tribunal considered it just to fix a hearing to enable the parties to lodge the additional documentation referred to in the preceding paragraph, said date to be intimated to the parties in due course.

A hearing was duly fixed for 3rd August 2022 at 10am, again to take place by teleconference, intimation of which was made to the parties by letter of 22nd June 2022.

6. HEARING 3rd AUGUST 2022

On 3 August, the hearing again took place by teleconference. Prior to same there had been sundry correspondence between the Tribunal and the parties, arising out of the Direction issued following the CMD. In particular, the Applicant had been in touch with the Tribunal by e-mails of 13th and 26th July 2022 and the Respondent by e-mails of 27th June, 18th July and 27th July. However, only the Respondent, represented by Clair Chester, attended the CMD. The Applicant's failure to attend came as something of a surprise to the Tribunal. The Tribunal clarified with Ms Chester that she was content to proceed but there was an obvious difficulty in respect of the Applicant's non-attendance. The Tribunal adjourned between about 10-15am and 10-30am, during which the Tribunal Clerk made several unsuccessful attempts to contact the Applicant on a mobile telephone number previously provided by her. Subsequent consideration by the Tribunal of said e-mail correspondence confirmed the Applicant's said e-mail of 26th July was in response to an e-mail from the Tribunal of the same date, asking her to "confirm and lodge any other e-mails, correspondence etc. to which you might seek to refer at the hearing on 3 August."

Accordingly, the Tribunal was satisfied, in the absence of any information to the contrary, that the Applicant was aware of today's Hearing but, for some reason, had not attended.

Notwithstanding the Respondent's willingness to proceed, the Tribunal did not consider it just to do so, on the basis it was not for the Respondent, or indeed the Tribunal, to state or surmise, any position to be advanced by the Applicant. Accordingly, the Tribunal was not minded to proceed to hear the case in the absence of the Applicant, in terms of Rule 29 of the Rules, which states:--

"Hearing case in the absence of a party

29. If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it."

In these circumstances, the Tribunal therefore considered whether it was entitled to dismiss the application under Rule 27(2)(b), on the basis that the

Applicant having, ostensibly at least, been aware of the date and time of the Hearing, then failed to attend at said Hearing. Said Rule states:--

“Dismissal of a party’s case

27.—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.

(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.”

In the circumstances ie the Applicant’s lack of attendance and/or availability to the Tribunal Clerk to clarify the reason why, the Tribunal decided that the Applicant had failed to co-operate with the Tribunal to such an extent that it could not then comply with its overriding objective of dealing with the proceedings justly and fairly and that accordingly the application fell to be dismissed in terms of said Rule 27(2)(b).

DECISION

To dismiss the proceedings under Rule 27(2)(b) of the Rules.

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.



SR QUITHER

3 AUGUST 2022

Legal Member/Chair

Date