



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

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA22/1144

15B Step Row, Dundee, DD2 1AF (“the Property”)

The Parties:-

Mx Frances Smith, 2 Corbie Drive, Carnoustie, Angus, DD7 7NU (“the Applicant”)

Mr Yusaf Alimahomed, 34 Seaforth Road, Dundee, DD5 1QH (“the Respondent”)

Tribunal Members

Ms H Forbes (Legal Member)

Mrs M Booth (Ordinary Member)

Decision (in absence of the Applicant)

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

The decision is unanimous.

Background

1. By application dated 13th April 2022, the Applicant applied to the Tribunal for a determination on whether the Respondent had failed to comply with sections 16, 19, 21, 21, 26, 108, 111, 112 and 113 of the Code. The Applicant included copy notification letter to Jamal Property World dated 27th March 2022, which had been crossed out with the words ‘*We are not owners/agents for this property*’ written across the notice. The Applicant included a further notification letter to the Respondent dated 1st April 2022. A private residential tenancy agreement between the parties commencing on 24th June 2020 was also submitted together with correspondence from a solicitor acting for the Respondent.

2. Responding by email dated 31st May 2022 to a query as to why the application was made against the landlord of the Property rather than the Letting Agent, the Applicant stated '*I am happy for Jamal Property World to be the subject.*'
3. By decision dated 17th June 2022, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal for a hearing. The Respondent was noted on Tribunal documentation as Mr Yusuf Alimahomed, and the Respondent's representative as Jamal Property World.
4. Notification of the application and a forthcoming Case Management Discussion was made to the Respondent by letter dated 29th June 2022.
5. Written representations dated 16th July 2022 were made by the Applicant.
6. Written representations dated 11th July and 18th August 2022 were made by the representative of the Respondent.

The Case Management Discussion

7. A Case Management Discussion ("CMD") took place by telephone conference on 26th August 2022. Neither party was in attendance. The Respondent was represented by Mr John Kidd, Solicitor.
8. The Tribunal considered the terms of the written representations lodged by the Applicant which stated that she may not be present due to ill-health. The Tribunal also considered the terms of Rule 29. The Tribunal determined that the Applicant had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Applicant.
9. Mr Kidd submitted that the application should be dismissed as it had been raised against the wrong person. The tenancy agreement is clear at clause 2 that Mr Sajid Alimahomed is the Letting Agent. The application had been raised against the landlord. It was his position that the application should also be dismissed as it is lacking in specification and relevance, and due to the non-attendance of the Applicant. Mr Kidd said it may be the case that the Applicant no longer had any interest in the application, as the tenancy had terminated in May 2022.
10. The Tribunal adjourned to consider matters. The Tribunal noted that section 48(4) of the Housing (Scotland) Act 2014 provides *No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.* The identify of the Letting Agent is abundantly clear from the tenancy agreement, yet no notification was made by the Applicant to Mr Sajid Alimahomed, and the application was raised against the

Landlord. The Tribunal considered the application to be incompetent for this reason.

11. The Tribunal considered there may also be issues in relation to specification and relevancy of the alleged breaches, however, given its decision on competency, it made no findings in this regard.

Right of Appeal

In terms of section 46 of the Tribunals (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.



Legal Member and Chairperson

26th August 2022