

Housing and Property Chamber
First-tier Tribunal for Scotland



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

STATEMENT OF DECISION OF THE TRIBUNAL TO DISMISS APPLICATION IN TERMS OF RULE 27 OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER RULES OF PROCEDURE 2017

In connection with

Property at Flat 3/2, 2279 Dumbarton Road, Yoker, Glasgow G140NJ

Case Reference FTS/HPC/RP/22/4378

Parties-

Ms Kimberley Mills, residing at Flat 3/2, 2279 Dumbarton Road, Yoker, Glasgow G14 0NJ (“The Tenant”)

Ms Deborah Gallacher, residing at 138 Croolston Avenue, Glasgow G52 3PR (“The Landlord”)

Nick Allan (Ordinary Member)(Surveyor)

Decision

1. The Tribunal, having made such enquiries as are appropriate determined to DISMISS the application which had been raised by the Tenant.

Background

1. By application dated 12th December 2022 (hereinafter referred to as “the application”) Tenant applied to the Tribunal for determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.
2. This application was accepted by the Chamber President on 13th March 2023 and was referred for the Tribunal’s consideration.
3. The Tribunal had intimated to parties that they would inspect the Property at 3/2, 2279 Dumbarton Road, Yoker, Glasgow at 10am on 2nd June 2023.

4. The Tribunal members attended at the property as intimated. The Tribunal were unable to gain access to the property. The common entrance door entry system was not answered by any party, although the Tribunal were eventually given access to the common close of the tenement in which the Property is situated. The Tribunal knocked on the door of the property, but there was no answer.
5. Neither the Tenant nor the Landlord attended a hearing which had been arranged for 11am on 2nd June 2023 at Glasgow Tribunals Centre.
6. Between the time of the inspection and the hearing the Tenant contacted the Tribunal by phone. She indicated she was unaware of planned inspection and hearing.
7. The Tenant indicated that the property continued to fail to meet the repairing standard.
8. In all the circumstances, and given that the Tenant had indicated she wished to proceed with her application the Tribunal decided to adjourn these proceedings and to fix a new date and time for an inspection of the Property and a new date and time for a hearing in relation to the Application.
9. A new Inspection was arranged for 7th July 2023 with a hearing also to be held on the same date.
10. Both the Landlord and the Tenant were notified in writing of the new date for the Inspection and Hearing
11. On 7th July 2023 the Tribunal attended again at the property to carry out an inspection. The Tribunal were, again, unable to gain access to the Property. The Tribunal called the Tenant's mobile phone. The Tenant answered the call. She explained that she was not present at the property and could not provide access. She further confirmed in that call with the Tribunal that she did not wish to proceed with the application.
12. Neither the Landlord or the Tenant attended the hearing on 7th July 2023 in relation to the Application.
13. The Tribunal considered the position in terms of rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber rules of Procedure 2017:-

27.— *Dismissal of a party's case*

(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.*

14. The Tribunal were satisfied that the Applicant in this case had failed to co-operate with the Tribunal by failing to provide access on two occasions, The Tribunal considered that they were not in a position to proceed with the application or to deal with proceedings justly and fairly.

15. In all the circumstances the Tribunal determined to dismiss the application.

Right of Appeal

16. **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.**

A Cowan