

**First-tier
and**

Housing and Property Chamber
First-tier Tribunal for Scotland



**Tribunal for Scotland (Housing
Property Chamber)**

Note of Case Management Discussion under rule 17 of The First-tier Tribunal for Scotland Chamber Rules of Procedure 2017 as amended

Chamber Ref: FTS/HPC/RP/22/2976

Property at 7 Kirk Street, Leith, EH6 5EX ("the Property")

The Parties:-

Mr Raymond Lower 7 Kirk Street, Leith, EH6 5EX, ("the Applicant")

Mrs Jie Song, 57 Pentland View, Edinburgh, EH10 6PY ("the Respondent")

Tribunal Members:

Gillian Buchanan (Chair) and Robert Buchan (Ordinary Member)

Background

1. A Case Management Discussion ("CMD") had previously take place on 25 January 2023. The purpose of that CMD was to determine which complaints in the present application could be taken forward and which related to and had been determined in a previous application, FTS/HPC/RP/21/0156.
2. Following the CMD on 25 January 2023 the tribunal determined that with the exception of the Applicant's complaint relative to the garden, all other complaints were either (a) previously made by the Applicant within the application FTS/HPC/RP/21/0156 and were determined by the tribunal during the course of that application culminating in a Certificate of Completion of Work being issued under Section 60 of the Act on 18 April 2022, or (b) unconnected to the Repairing Standard and as such fell outwith the tribunal's remit.
3. The only new complaint made by the Applicant in this application and that requires to be determined by the tribunal is relative to the garden. Accordingly the tribunal scheduled a further CMD to take place on 9 May 2023 at 10.00am to consider the Applicant's complaint relative to the garden.

Additional Documentation

4. Subsequent to the CMD on 25 January 2023 and prior to the CMD on 9 May 2023 the tribunal received the following additional representations from the parties:-
 - i. From the Applicant –
 - Email dated 2 February 2023 with attachment;
 - Email dated 3 February 2023 with attachment;
 - Email dated 1 March 2023 with attachment.

- ii. From the Respondent –
 - Emails (x2) from the Applicant with attachments dated 29 January 2023;
 - Email dated 27 February 2023 with attachments;
 - Email dated 5 March 2023 with attachments.

The Case Management Discussion

5. The CMD took place by telephone conference on 9 May 2023. The Respondent attended the CMD. The Applicant, unusually, was neither present nor represented.
6. The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD.
7. The Respondent advised the tribunal that she understood the Applicant had been admitted to hospital on 13 March 2023 and had not returned to the Property since. Another tenant in the Property had advised the Respondent that the Applicant had moved somewhere else – perhaps to a nursing home or care home but she didn’t know if that was right or not. That other tenant had taken the stair light down given the Respondent’s absence.
8. The Respondent advised the tribunal that another tenant in the Property was dealing with the Applicant’s mail by marking it “return to sender” and posting back to the sender. The tenant said some of the Applicant’s belongings had been taken away but not everything.
9. No keys had been returned by the Applicant to the Respondent. The Respondent had sent the Applicant two emails about the keys but he has not answered.
10. The Respondent has not entered the Property leased to the Applicant.

Decision

11. The tribunal was mindful that the Applicant is an elderly gentleman whose health is not good. Notwithstanding that the Applicant had received due intimation of the CMD by email on 7 March 2023 the tribunal did not feel it appropriate to proceed in his absence. The tribunal has dealt with two such applications by the Applicant and it is unusual for him not to attend and participate fully.
12. The tribunal therefore determined to adjourn the CMD to make enquiries as to the whereabouts of the Applicant, to establish if the tenancy is ongoing and, if so, to determine whether the Applicant is proceeding with the application.

Further Developments

13. By email dated 10 May 2023, the Respondent intimated that the Applicant had passed away and that his funeral had been held that day, carried out by William Purves.
14. On further enquiries from the Tribunal, by email dated 20 May 2023 the Respondent advised that she had received the Applicant’s room keys from his executor that day, provided details of the Applicant’s solicitor and advised that in April the Applicant had previously been moved to 7 MacGill Drive, Edinburgh by Edinburgh City Council where he passed away due to COVID19.

15. The Tribunal was saddened to hear of the Applicant's death.

Reasons for Decision

16. Having received intimation that the Applicant had passed away and that his executor had returned to the Respondent his keys to the Property, it follows that the tenancy is lawfully terminated and therefore the application is treated as having been withdrawn in terms of Schedule 2, Paragraph 7(1) of Housing (Scotland) Act 2006. The Tribunal then considered whether the application should be determined or whether it should be abandoned, all in terms of Schedule 2, Paragraph 7(3) of the 2006 Act.

17. Having carefully considered the position the Tribunal decided that the application should be abandoned as there were no matters which raised health and safety issues for any future tenants.

Decision

18. The application is withdrawn and abandoned.

19. The decision of the Tribunal was unanimous.

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.

20. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed G Buchanan

Date : 25 May 2023

Legal Member and Chairperson