

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision on the Respondents' Application for Review

by

the Housing and Property Chamber of the First-tier Tribunal for Scotland

(Hereinafter referred to as "the Tribunal")

Under Sections 43(1) and (2)(b) and 44(1)(a) of the Tribunals (Scotland) Act 2014 and rule 39 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Reference Number: FTS/HPC/LA/18/1720

The Parties:-

Lucinda Willis, Flat 18, Caird House, 4 Scrymgeour Place, Dundee DD3 6TU
("the Applicant")

Rent Flats Dundee Limited, (company number SC578355) having a place of business at 214 Blackness Road, Dundee, DD1 5PL ("the Respondents")

represented by Bannatyne Kirkwood France & Co, solicitors, 16 Royal Exchange Square, Glasgow G1 3AG

Tribunal Members:-

David Bartos (Legal Member and Chairperson)
Helen Barclay (Ordinary Member)

NOTICE TO THE PARTIES

The Tribunal refuses the Respondents' application for a review of its decision dated 4 March 2019. It takes no action in relation to that decision.

Reasons

1. It is for the Tribunal to decide whether the review and proposed revision of its decision sought by the Respondents is in the interests of justice. That is the effect of rule 39(1) of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The Tribunal made it clear in paragraphs 7, 8 and 11 of its decision of 9 January 2019 that the aim was that the Respondents produce a proposed style of lease which did not in its terms claim use of a deposit for purposes beyond those allowed in section 90(3) of the Rent (Scotland) Act 1984. In that decision the Tribunal allowed the Respondents additional time to comply with the Letting Agent Enforcement Order in that respect.
3. Despite that explanation and extension of time the Respondents did not seek to lodge any revised style in order to comply with the Order. As a result on 4 March 2019 the Tribunal decided that the Respondents had failed to comply with the Order without reasonable excuse.
4. In finding the Respondents to have failed to comply the Tribunal repeated the aim of the Order in clear terms in paragraphs 6 and 7 of its decision of 4 March 2019.
5. This appears to have triggered the lodging of a revised style of lease by the Respondents accompanying their application for review of the failure to comply decision. However even that revised style appeared to allow the landlord to use the deposit for purposes beyond the lawful ones set out in section 90(3) of the 1984 Act.
6. This continuing failure was noted in the notice of proposed review issued by the Tribunal to the parties. There was no response to the proposed review from the Applicant. However the Respondents lodged a second-revised style. Again there was response from the Applicant to this second-revised style.
7. For the first time the second-revised style appeared to comply with the outstanding part of the Order. On the basis of this the Respondents sought

review of the decision of 4 March 2019 which decided that they had failed to comply with the Order.

8. The outcome of a review is that the decision being reviewed can be left untouched, corrected for minor or accidental errors, or set aside (annulled) in its entirety. If it is set aside it must be re-decided. That is the effect of section 44 of the Tribunals (Scotland) Act 2014. The Respondents did not found on any minor or accidental error. They founded on eventual belated compliance with the Order where there was no suggestion that timeous compliance with the Order could not have been achieved. The question for the Tribunal was therefore whether those circumstances made it in the interests of justice that the decision of 4 March 2019 should be set aside.
9. The Tribunal found that in effect the Respondents were seeking to have the decision of 4 March 2019 re-decided on the basis of material, namely the revised style, that could have existed but did not exist on 4 March. This went well beyond the situation of new evidence as to past events that had not been placed before the Tribunal at the key time. In effect the Respondents were seeking to have a 'second bite at the cherry' in order to re-write history and avoid a finding of a failure to comply. They did not suggest that the decision of 4 March 2019 was in any way erroneous.
10. The Tribunal took the view that the review and setting aside of the 4 March 2019 decision was not in the interests of justice. It therefore took no action to alter that decision following the review.
11. Despite being offered the possibility neither party sought a hearing on the application for review and the Tribunal took the view that having regard to the absence of a dispute as to the facts and the interests of the parties, it could decide the application without a hearing. In making its decision the Tribunal took account of the Respondents' written representations enclosed

with the communications dated 20 March and 5 April 2019. The decision was unanimous.

D Bartos

Signed .

30 April 2019

David Bartos, Chairperson