

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision to serve on the Scottish Ministers a Notice of Failure to Comply with a Letting Agent Enforcement Order Enforcement Order under Section 50(2) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/19/2336

Parties

Mr Gary Kirkwood, 39 Burns Wynd, Stonehouse, Lanarkshire ML9 3DU (“the Applicant”)

and

Hanlon Clark Lettings Limited, incorporated in Scotland (SC475658) and having their Registered Office at 8 Main Street, Strathaven, Lanarkshire ML10 6AJ (“the Respondents”)

Tribunal Members: George Clark (Legal Member) and Mary Lyden (Ordinary Member)

On 3 December 2019, the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) issued a Letting Agent Enforcement Order (“the Order”) on the Respondents in respect of a failure to comply with the Letting Agent Code of Practice, made under the Letting Agent Code of Practice (Scotland) Regulations 2016

The Order contained the following provisions:

“The Tribunal requires the Letting Agent to Pay to the Applicant the amount of £645 as compensation for the loss suffered by the Applicant as a result of the failure to comply with the Code.”

The time allowed for compliance with the Order expired and, by e-mail dated 31 January 2020, the Applicant stated that none of the actions required by the Order had been completed. The Compliance Response Form sent by the Tribunal to the Respondents was returned marked “Addressee Gone Away”. The Respondents have not contacted the Tribunal since the Order was issued.

REASONS FOR THE DECISION

The Applicant has confirmed that he has not received any payment from the Respondents. The Respondents have not contacted the Tribunal to provide a reasonable excuse for their failure to comply. Accordingly, the Tribunal has determined that the Respondents have not complied with the terms of the Order and that, in terms of Section 50(2) of the Housing (Scotland) Act 2014, the Tribunal is obliged to serve notice of that fact on the Scottish Ministers. The Tribunal also decided to report the failure to Police Scotland, as the Respondents have not registered as letting agents, so have committed a criminal offence.

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.

Please note that in terms of Section 51(1) of the Act, a Letting Agent who, without reasonable excuse, fails to comply with a Letting Agent Enforcement Order commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Signed

George Clark (Legal Member/Chair)

Date 15 April 2020