

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 48(1) of the Housing  
(Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/23/1602**

**Parties:**

**Lucinda Burke, 57 West Pilton Place, Edinburgh ("the Applicant")**

**DJ Alexander Lettings Ltd, 1 Wemyss Place, Edinburgh ("the Respondent")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Helen Barclay (Ordinary Member)**

### **DECISION**

The Tribunal determined that the application should be dismissed.

The decision is unanimous.

### **Background**

1. The Applicant lodged an application in terms of Rule 95 of the Tribunal Procedure Rules 2017 and Section 48(1) of the 2014 Act. The application comprises documents received by the Tribunal on 18 May 2023 and states that the Respondent has failed to comply with Overarching Standards of Practice ("OSP") 17 and 19 of the Letting Agent Code of Practice. A letter to the letting agent notifying them of the complaints was lodged with the application.
2. A Legal Member of the Tribunal with delegated powers of the President referred the application to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 15 August 2023 at 2pm by telephone conference call.
3. The CMD took place on 15 August 2023. The Applicant did not participate. The Respondent was represented by Mr Alexander.

## **Summary of discussion**

4. The Tribunal noted that the application was lodged by Granton Information Centre on behalf of the Applicant on 18 May 2023. In June 2023, they withdraw from acting due to lack of instructions. The Tribunal issued a copy of the application paperwork and a letter with the conference call details to the Applicant by recorded delivery post to the address specified in the application form.
5. Mr Alexander told the Tribunal that the Applicant has not relinquished the tenancy, which is the subject of the application, but it is understood that she does not reside there on a full-time basis. An eviction order has been granted by the Tribunal in relation to rent arrears and is due to be enforced by Sheriff Officers.
6. The Tribunal determined that the CMD should be continued to another date to ascertain if the Applicant wishes to proceed with the application or otherwise. The Tribunal noted that very little information or evidence has been lodged in support of the case and that it would not be possible to reach a fair decision in the absence of additional information from the Applicant. The Tribunal advised Mr Alexander that a direction would be issued which would require the Applicant to confirm if she wished to proceed with or withdraw the application and, if she failed to do so, the application may be dismissed. In the meantime, a new date for the CMD would not be scheduled.
7. On 17 Augusts 2023, the Tribunal issued a note on the CMD and a direction to the Applicant. The Direction stated, "The Applicant is required to notify the Tribunal in writing, no later than 25 August 2023, if she wishes to withdraw or proceed with the application. The Applicant should note that a further CMD will not be arranged until a response is received and the application may be dismissed if the Applicant fails to respond." The Applicant has not responded to the direction and has not contacted the Tribunal since it was issued.

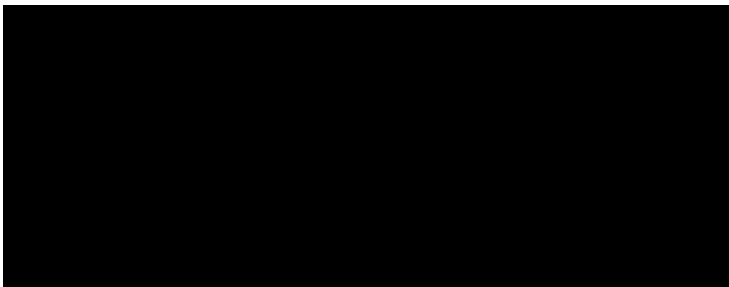
## **Reasons for Decision**

8. Rule 27(2) of the Tribunal Procedure Rules 2017 states, " 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".

9. The Tribunal is satisfied that it cannot deal with the proceedings “justly and fairly” in the absence of further information by the Applicant due to the very limited information submitted in relation the complaints and the failure by the Applicant to participate in the CMD. The Tribunal also notes that the Applicant has been directed to confirm if the application is to proceed or be withdrawn. She was put on notice that failure to comply with the direction could lead to the application being dismissed. The Applicant has failed to comply with the direction.
10. The Tribunal is therefore satisfied that the application should be dismissed in terms of Rule 27(2) of the Tribunal Procedure Rules.

## **Appeals**

**A homeowner or property factor 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.**



Josephine Bonnar, Legal Member

7 October 2023