

Housing and Property Chamber
First-tier Tribunal for Scotland



**First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")**

**DECISION: Rule 27 of the First-tier Tribunal Housing and Property Chamber
(Procedure) Regulations 2017 ("the 2017 Rules")**

Reference number: FTS/HPC/FTS/HPC/CV/24/1174

**Re: Property at 14 Oakbank Street, Airdrie, Lanarkshire, ML6 8LD ("the
Property")**

The Parties:

**Karen McArthur, Flat 4 Portland Stables, 6 Portland Brae, Hurlford,
Kilmarnock, KA1 5AL (the Applicant)**

**Landlord Agents, 5 South Charlot Street, Edinburgh, EH2 4AN (Applicant's
Representative)**

**Kyle Watson, present whereabouts unknown, previously residing at 14
Oakbank Street, Airdrie, Lanarkshire, ML6 8LD (the Respondent)**

Tribunal Member(s):

Ms. Susanne L. M. Tanner K.C. (Legal Member)

DECISION

(1) The tribunal dismissed the Application in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, because the Applicant /Applicant's Representative failed to comply with an order which stated that failure by the Applicant/Applicant's Representative to comply with the order could lead to dismissal of the proceedings or part of them; and failed to cooperate with the First-tier Tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

STATEMENT OF REASONS

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 11 March 2024 for rent arrears in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks an order for payment of rent arrears in the sum of £2045.00 for arrears as at February 2024.
3. The Applicant's Representative lodged documents with the Application as follows:
 - 3.1. Agent's mandate;
 - 3.2. Copy of the private residential tenancy agreement;
 - 3.3. Copy rent account statement; and
 - 3.4. Copy emails about payment plan.
4. On 2 April 2024, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 14 June 2024 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 25 July 2024 at 1000h. The Respondent was invited to make written representations in response to the Application by 5 July 2024. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers.
5. On 16 July 2024, the Applicant's Representative lodged an updated rent statement and a revised Application Form seeking to amend and seek the rent arrears to 16 July 2024. A copy was sent to the Respondent.
6. A Case Management Discussion ("CMD") took place on 25 July 2024 by teleconference in this and a related case seeking an eviction order (EV/24/1112). Mr Jeffrey Livingstone from the Applicant's Representative attended. The Respondent did not attend the CMD. There had been no communication to say that they could not attend. The tribunal was satisfied on the basis of the notification of service that the requirements of Rule 24(1) of the 2017 Rules

regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and the material before it, in terms of Rule 29 of the 2017 Rules.

7. The tribunal discussed the Applicant's Representative's application to amend. He is seeking £4590.00 in rent arrears to 16 July 2024. The tribunal allowed the Application to be amended. However, insufficient notice of the application to amend was given to the Respondent to allow the tribunal to consider making an order for the increased sum at the CMD on 25 July 2024. Mr Livingstone requested an adjournment of the CMD to a later date, so that the Applicant could seek the amended sum; or any further amended sum once the Respondent has left the Property.
8. The tribunal decided to adjourn the CMD for the following reasons:
 - 8.1. To allow the Applicant's Representative to seek a payment order for the amended sum of £4590.00.
 - 8.2. To allow the Applicant's Representative to consider a further application to amend the sum claimed (which must be notified to the tribunal and Respondent no later than 14 days before the next CMD).
9. The tribunal fixed a second CMD and attempted to notify the Respondent. The tribunal was advised that the Respondent no longer resided in the Property. The CMD was cancelled. The Applicant's Representative was asked to provide an update address for the Respondent, which they failed to do.
10. The tribunal issued Directions to the Applicant's Representative on 19 December 2024, requiring compliance by 27 December 2024; and further on and 7 January 2025, as follows:

"The Applicant / Applicant's Representative has failed to comply with the tribunal's Direction of 19 December 2024 which required it to do the following no later than 27 December 2024:

To send to the tribunal's administration no later than 27 December 2024

- (I) evidence of what you have done to find the address of the Respondent, after you became aware that their address was unknown. Steps could include instruction of a tracing agent, or other action to find the address with the outcome of any enquiries; and*
- (II) A revised application for service by advertisement, including the above information.*

1. *The tribunal is issuing this further Direction ordering the Applicant / Applicant's Representative to comply with the orders in the previous Direction (in 1., above) no later than 15 January 2025.*
2. *The Applicant / Applicant's Representative is notified in terms of Rule 27 of the 2017 Rules that failure to comply with the orders in this Direction, or to cooperate with the tribunal to such an extent that the tribunal cannot deal with proceedings justly and fairly could lead to the dismissal of the proceedings or part of them."*

11. The Applicant's Representative failed to comply with both sets of Directions, including the second, in which they were notified that the Application would be dismissed if they failed to comply.

Application of relevant statutory provisions

12. Rule 27(b) of the 2017 Rules provides that the tribunal may dismiss the whole or part of the proceedings if the applicant has failed to 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 the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly.

13. The Applicant (through her Representative) has failed to comply with an order which stated that failure by the Applicant/Applicant's Representative to comply with the order could lead to the dismissal of the proceedings or part of them; and the applicant has failed to cooperate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly and fairly. The Applicant and/or her representative failed to comply with two Directions, the second of which contained a notice that the application may be dismissed if there was failure to comply.

14. Public money has been utilised in the tribunal progressing with the case management in the absence of any cooperation from the Applicant/Applicant's Representative to enable the tribunal to deal with proceedings justly and fairly.

15. The tribunal therefore dismisses the Application in terms of Rule 27 of the 2017 Rules.

16. It follows that the case is at an end and there will be no further procedure.

Appeals

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.

Ms Susanne L. M. Tanner K.C.
Legal Member and Chair

29 January 2025