

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 17 of the Schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/18/0351

Re: Property at 19 Spateston Road, Johnstone, PA5 0SX (“the Property”)

Parties:

Bellcove Limited, C/o The Property Store, 111 Albert Drive, Glasgow, G41 2SU (“the Applicant”)

Miss Monica Anne Barrett, 19 Spateston Road, Johnstone, PA5 0SX (“the Respondent”)

Tribunal Members: Ewan Miller (Legal Member)

Decision (in absence of the Applicant and the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant’s case is dismissed under Rule 27 First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Background

The Applicant had lodged an application for possession of the Property under the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) - Regulations 2017 on the basis of non-payment of rent.

An initial Case Management Discussion took place on 24 April 2018. That discussion noted that there were potential issues relating to the validity of service of the Notice to Quit and whether the Notice to Quit had expired prior to the application for possession being made to the Tribunal.

There was also an issue around an application for backdated housing benefit made by the Respondent to Renfrewshire Council.

To allow the above matters to be addressed the Case Management Discussion was continued until 5 June 2018.

On 4 June 2018, the Applicant's representative emailed the office at 16:39 to advise that the parties had agreed they would not attend so that "they could continue monitoring payments from the housing benefits"

Despite the last minute nature of the request the Tribunal treated this as a postponement request and the Case Management Discussion was postponed until 17th August 2018. The Tribunal made a direction that unless the application was withdrawn the parties were to be present at the Case Management Discussion

Case Management Discussion

The Case Management Discussion was duly convened on 17 August 2018 as the application had not been withdrawn. No correspondence had been received from either party in the interim. Neither party appeared and neither party was represented.

The Clerk to the Tribunal phoned both parties representatives. The representative for the Applicant advised that he was unaware that the case was proceeding on 17 August and his client had not advised him of this. The Respondent's representative advised that he was no longer acting in the matter but that he had understood Shelter would be attending to represent his former client.

Reasons for Decision

The Tribunal considered its options in the matter. The Tribunal could either adjourn again the Case Management Discussion or dismiss the Applicant's application.

The Tribunal noted that notwithstanding the Applicant's representative's assertion that he and his client had been unaware of the hearing set for 17 August 2018, the Tribunal noted that a recorded delivery letter with the new date had been sent to the Applicant. An email had also been sent to the Applicant's representative on the email address normally used by him.

The Tribunal noted that the adjournment request for the 5 June hearing had been made at the very last minute and with limited explanation. The reference to "continue monitoring payments from housing benefits" suggested the possibility that at least some rent was being paid again. Neither the Applicant nor their representative had turned up at the 17 August hearing despite having been notified and a specific request for their attendance made in the direction. Nor had they made any representations in the interim.

It appeared to the Tribunal that the Applicant and their representative had a casual manner in relation to their dealings with the Tribunal.

The Tribunal noted that it had the power to dismiss the Applicant's case in terms of Rule 27(2)(b) where a party fails to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings justly and fairly. The Tribunal was satisfied that in the circumstances it was not appropriate to continue the Case Management Discussion again. It was not possible to make a decision on the day from the information before the Tribunal and there appeared to be no merit at this stage in setting a full hearing. The running of hearings comes at a cost to the public

purse and the Applicant and his representative appeared to show a disregard for this. The Tribunal also noted that Rule 30 gave additional protection to the Applicant in that it afforded them the opportunity to seek to recall the dismissal if it was required in the interests of justice.

Decision

The Applicant's application is dismissed under Rule 27(2)(b) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Ewan Miller

Legal Member/Chair

Date

17/8/2018

