



71 Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1924

Re: Property at 39 Mains Avenue, Beith, KA15 2AT (“the Property”)

Parties:

Mrs Pauline Comerford, 10 Woodside Road, Carmunnock, Clarkston, Glasgow, G76 9AT (“the Applicant”)

Mrs Hayli Gale, ADDRESS UNKNOWN, ADDRESS UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision in absence of the Applicant

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed under Rule 27 of the of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedural Rules”)

Background:

This was an application under Rule 111 of the Procedural Rules made on 9 September 2020 for payment of rent arrears.

An initial Case Management Discussion (CMD) was scheduled for 26 October 2020 but the service on the Respondent failed. Sheriff Officers reported on 27 September 2020 that the property was no longer occupied.

The Applicant applied for service by advertisement and a further CMD was scheduled for 27 November 2020. The Applicant's representative Ms McCulloch attended and stated that the arrears were now £2,101.89 and a request was made to include a further Respondent.

The Applicant was asked at the CMD to submit within 14 days an up to date rent account.

The CMD note of 27 November 2020 is referred to for its terms.

No up to date rent account was submitted.

On 8 December 2020 the Applicant's representative Ms McCulloch was notified of the further CMD date of 18 January 2020. The notification was sent by email to the email address provided by the Applicant's representative, namely shirleyann.mcculloch@rentlocally.co.uk. The Respondent was notified by Advertisement on the Tribunal's website in terms of Rule 6A of the Procedural Rules.

The Case Management Discussion:

Neither party attended the Case Management Discussion on 18 January 2020. The Tribunal attempted to contact the Applicant's representative by telephone but was unable to reach the Applicant's representative.

Reasons for Decision

The Tribunal was satisfied that the Applicant's representative, who had acted on behalf of the Applicant throughout the proceedings, had been duly notified of the CMD and that she had clearly received correspondence from the Tribunal at the email address provided and used for correspondence during the application process.

There was no explanation for her failure to attend the CMD.

The Tribunal decided not to adjourn the case under Rule 28. Neither party had requested an adjournment there was no contact from the Applicant or her representative to indicate that the date or time would not be suitable or that she would have a problem in participating at the CMD. The documents requested at the previous CMD on 27 November 2020 had also not been lodged.

Rule 27(2)(b) provides:(2) The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to....(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.

Ultimately it is for the Applicant to prove the relevant matters for an application under Rule 111

The Tribunal had no up to date information whether at the time the case called for the CMD on 18 January 2021 the rent arrears as claimed were still outstanding.

Given the Applicant's absence at the CMD it was not possible for the Tribunal to deal with the proceedings justly and fairly.

Decision

The Tribunal resolved to dismiss the application in terms of Rule 27 (2) (b) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended).

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.



**Petra Hennig McFatrige
Legal Member**

**18 January 2021
Date**