



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/1798**

**Re: Property at 1 Westfield, Dumbarton, G82 4JR (“the Property”)**

**Parties:**

**Mr Richard Keller, 195 Glasgow Road, Dumbarton, G82 1DW (“the Applicant”)**

**Mr Allan MacLeod and Mr Iain MacLeod, 1 Westfield, Dumbarton, G82 4JR (“the Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Applicant and the Second Respondent)**

In this matter a Case Management Discussion (“CMD”) took place by telephone conference on 7 September 2022 at 10.00am. The First Respondent attended. The Applicant was neither present nor represented. The Second Respondent was neither present nor represented.

The Tribunal left the conference line open until 10.10am but neither the Applicant nor the Second Respondent joined.

The Tribunal had regard to Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) headed “Hearing case in absence of a party”.

Rule 29 states:-

*“If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it.”*

Rule 24(1) and (2) headed “Hearings” states:-

- "(1) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a hearing (including any adjourned or postponed hearing) and any changes to the date, time and place of a hearing.*
- (2) The notice period for a hearing must be no less than 14 days from the date of receipt of the notice, unless the parties consent to a shorter period or there are urgent or exceptional circumstances."*

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to both the Applicant and the Second Respondent having received notice of the CMD and determined to proceed in the absence of the parties in terms of Rule 29.

Prior to the CMD the Tribunal had received emails from the Applicant dated 5 and 14 August 2022.

The Tribunal had also received written representations from the First Respondent dated 12 August 2022.

### **Reasons for Decision**

The Tribunal also had regard to Rule 27 headed "Dismissal of a party's case and to Rule 27(2) in particular which states:-

- "(2) 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."*

The Tribunal could not therefore make any order in favour of the Applicant without the attendance of the Applicant or a representative on his behalf.

In particular the application to the Tribunal disclosed no ground or grounds upon which an eviction order is sought and failed to address why it is therefore reasonable for the Tribunal to grant an eviction order. Further, on the face of it, the Notices served on the Respondents under Section 33 of the Housing (Scotland) Act 1988 and dated 3 December 2022 appeared to be invalid, the removal date referred to therein not corresponding with an ish date relative to the Short Assured Tenancy Agreement upon which the application is based.

In the absence of the Applicant in particular the Tribunal could not deal with the application justly and fairly and therefore dismissed the application under Rule 27(2)(b) of the Rules.

### **Decision**

The Tribunal dismissed the application.

### **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.

# G. Buchanan

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Legal Member/Chair

7 September 2022  
Date