



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/2118

Re: Property at 7 Mansfield Court, Scone, PH2 6UE (“the Property”)

Parties:

Mr David Taylor, Shangrila, Murrayshall, Perth, PH2 7PG (“the Applicant”)

Mr Ross Stuart, Ms Kerry Devlin, 1 Smillie Place, Bridge of Earn, PH2 9FR (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Applicant and Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application.

- Background

Following the lodging of the application received by the Tribunal on 14 August 2018 (the Application), a Case management Discussion took place on 22 February 2019 (the First CMD). The Applicant did not attend the First CMD, but the Respondents did. In advance of the First CMD, a firm of solicitors Messrs Jameson Mackay Solicitors of 71 High Street, Auchterarder (who had lodged the Application on behalf of the Applicant) sent an email to the Tribunal on 6 February 2019 indicating that neither they nor the Applicant would be attending the First CMD but that the Applicant still sought a payment order in the amount of two months rent.

Following representations by the Respondents at the First CMD, the case was continued to another Case Management Discussion (CMD). The Respondents' position at the First CMD was that:

- 1) They had received a Notice to Quit (NTQ) from the Applicant ordering them to leave the Property on 20 July 2018 and that they had left the Property on 18 July 2018; and
- 2) That they had paid a deposit to the Applicant of £500 which had not been returned to them and that this would cover any rent due for July 2018. In fact, as they left the Property on 18 July 2018, they were due some rent back from the Respondent.

A written note of the First CMD dated 22 February 2019 was issued to the parties. In that note the Applicant was requested to confirm the following:

- 1) Whether the Applicant was insisting on the Application;
- 2) If so, to provide within 14 days a copy of the NTQ served on the Respondents; and
- 3) To confirm in writing within 14 days whether the Applicant has retained the deposit of £500.

In response the Tribunal received an email from Messrs Jameson Mackay dated 1 March 2019, which enclosed a copy of a NTQ dated 7 June 2018 along with a notice under section 33 (1)(d) of the Housing (Scotland) Act 1988 dated the same date. Jameson Mackay also confirmed that the Applicant was insisting upon the Application and that there was a deposit of £500 and that it had been retained by the Applicant as "...there had been no response to the damages claim...".

- The Case Management Discussion

A CMD took place on 10 April 2019. Intimation of the date of the CMD was made to both the Respondents and Messrs Jameson Mackay by way of recorded delivery letter dated 19 March 2019. Both letters were signed for. The letter to the Respondents, was signed for on 21 March 2019 and the letter to Messrs Jameson Mackay was signed for on 20 March 2019. Despite this, there was no appearance by or on behalf of either party and no further communication was made to the Tribunal. The Tribunal then considered the Application and the further information, particularly the NTQ dated 7 June 2018. The Tribunal took the decision to dismiss the Application in terms of Rule 27 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) in that the Applicant, through his representatives Messrs Jameson Mackay had failed to cooperate with the Tribunal to such an extent that the Tribunal cannot deal with the Application justly and fairly. Whilst it was noted that Jameson Mackay had responded to the information request following the First CMD they had not sought to attend the CMD on 10 April 2019 or to communicate further with the Tribunal regarding the CMD on 10 April 2019, not even as a matter of courtesy.

- Reasons for Decision

The Application seeks to claim two months' rent arrears from the Respondents. The papers suggest these rent arrears arose in July and August of 2018. The total amount was therefore £1,000. Notwithstanding the terms of the Application, following provision of the NTQ dated 7 June 2018 it was clear that Messrs Jameson Mackay

on behalf of the Applicant had issued NTQ to the Respondents and that the NTQ ordered the Respondents to vacate the Property as of 20 July 2018. The Respondents had previously stated that they vacated the Property on 18 July 2018 in accordance with the said NTQ. It is therefore not clear why the Applicant or Messrs Jameson Mackay sought to claim that the Respondents were due any further rent for the Property past the date of the expiry of the NTQ. The effect of serving a valid NTQ is to terminate any contractual tenancy and therefore any liability to pay rent only applies where tenants remain in possession of property concerned (section 16 of the Housing (Scotland) Act 1988). The notice under section 33(1)(d) (which was set to expire on 1 September 2018) has no relevance to the question of liability for rent as it has no effect on the underlying contractual tenancy.

Whilst it was noted that the NTQ dated 7 June 2018 was in fact invalid in that it did not give the required contractual period of notice nor was it set to expire on an *lsh* or end date, the Applicant can hardly complain if he demands that the Respondents leave the Property by a certain date and they comply to that demand. The Tribunal formed the view that the Applicant would, by service of the NTQ in the form provided and the Respondents acting in accordance with that NTQ, be barred from insisting on payment of rent beyond the expiry date of the NTQ (20 July 2018).

From the bank statement lodged on behalf of the Applicant, it was clear that rent was paid by the Respondents on 5 June 2018 and that this rent would be for the rent due in June 2018. It was also clear from the response to the note of the First CMD that the Applicant had retained the deposit of £500. On the face of it, that £500 would more than cover any rent due for the period 1 to 20 July 2018. Neither the Applicant nor Messrs Jameson Mackay have given any information as to the nature of the "damages claim" dealt with through the tenancy deposit scheme and there is nothing in the Application to suggest that anything other than rent was due by the Respondents to the Applicant.

Accordingly, without the Applicant or Messrs Jameson Mackay being present to Tribunal was not in a position to determine this issue any further.

- Decision

The Application should be dismissed under Rule 27 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.

Mr Rory Cowan

Legal Member/Chair

Date 10 April 2019