

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 27(2)(b) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/PR/19/0776

Re: 15/2 Hawkhill, Edinburgh, EH7 6LA ("the Property")

Parties:

Ms Sarah Fitzpatrick ("the Applicant")

Mr Grzegorz Cielielski AKA Greg Cielecki ("the Respondent")

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that the Applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings justly and fairly within the meaning of Rule 27(2)(b) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 103 on 11 March 2019. The application seeks repayment of a deposit and payment in respect of failure to protect the deposit under the Tenancy Deposit Schemes (Scotland) Regulations 2011. The following documents were provided:
 - (i) Application;
 - (ii) Additional Information Document;
 - (iii) Copies of text messages with landlord; and
 - (iv) Application requesting service by advertisement dated 19 March 2019.

2. On 28 March 2019 the application was considered by the Tribunal. By Letter from the Tribunal dated 29 March 2019 the Applicant was requested to provide (amongst others) the following information:
 - (a) Evidence of payment of the deposit;
 - (b) Confirm steps taken to ascertain the landlord's address;
 - (c) Confirm of the exact amount sought in terms of Rule 103 and whether separate application to be raised for repayment of deposit.
3. The Applicant was advised that if the information was not provided by 26 April 2019 then the application may be rejected.
4. No response was received.

Reasons for Decision

5. The Tribunal considered the application in terms of Rule 27(2)(b) of the Procedural Rules. That Rule provides:-

"Dismissal of a party's case

27.—

- (1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal does not have jurisdiction in relation to the proceedings or that part of them.*
- (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."*
6. In light of the Applicant's failure to respond to the Tribunal's request for further information the Tribunal found that the Applicant had failed to co-operate with the Tribunal to such an extent that it could not deal with the proceedings justly and fairly. The essential elements of Rule 27(2)(b) were made out.
7. The application is accordingly dismissed.

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

Alan Strain
Legal Member/Chair

Date

8 May 2019