

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011

Chamber Ref: FTS/HPC/PR/19/4060

Re: Property at 17 Ferry Brae, North Kessock, IV1 3YH (“the Property”)

Parties:

Alan Fowler and Nina Ukkonen, (“the Applicants”)

Ronald MacDonald, (“the Respondent”)

Tribunal Members:

Lynsey MacDonald

Decision (in absence of the Applicants)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

1. Background

- 1.1. On 23rd December 2019, the Applicants lodged an application in terms of Rule 103 (Application for order for payment where landlord has failed to carry out duties in relation to tenancy deposits) dated 18th December 2019. The Applicants sought return of their deposit.
- 1.2. In support of the application the Applicants lodged a copy of a tenancy agreement, and subsequently lodged a bank statement.
- 1.3. The Tribunal fixed a Case Management Discussion for 26th March 2020, and this was intimated to parties. As a result of the coronavirus pandemic, that Case Management Discussion was postponed to 9th July 2020, and then rescheduled for 13th July 2020. The rescheduled date was intimated to the Applicants by email on 11th June 2020, along with instructions about how to call into the teleconference. Further documentation was emailed to the Applicants on 10th July 2020, which included information about the date of the Case Management Discussion.

2. The Case Management Discussion

- 2.1. By 10am the Applicant had not joined the teleconference. The Tribunal delayed in calling the Case Management Discussion, to allow the Applicant

additional time to join the teleconference, in the event that they were having difficulty doing so. The Case Management Discussion commenced at 10.15am, by which time the Applicants had still not joined the teleconference.

2.2. The Respondent attended the Case Management Discussion. He was accompanied by his partner, Ms MacLeod, who was acting as his supporter.

2.3. The Respondent asked the Tribunal to proceed in the absence of the Applicants, explaining that he had taken a day off work in order to attend the Case Management Discussion. The Respondent further explained that he had a substantive defence to the Application.

2.4. The Tribunal was satisfied that the Applicants had been given reasonable notice of the time and place of the Case Management Discussion and had wilfully failed to attend at the Case Management Discussion.

2.5. Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”) provides that:

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.

2.6. The Tribunal was satisfied that the requirements of rule 24(1) had been met and that it would be open to the Tribunal to proceed in the absence of the Applicants.

2.7. Rule 27 of the 2017 Regulations provides that:

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.*

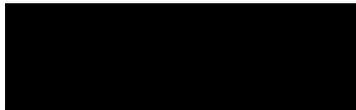
2.8. The Applicants had not lodged written representations beyond that contained in their application. The Applicants had not indicated that they would not attend the Case Management Discussion, and did not lodge written submissions in lieu of their attendance. The order sought by the Applicants required further explanation. The Respondent had indicated that he had a defence to the application. The Tribunal considered that the Applicants’ failure to attend the Case Management Discussion meant that it could not deal with proceedings justly and fairly, and accordingly dismissed the application.

3. 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.



13th July 2020

Legal Member

Date