



Decision on Review under Rule 39 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 and Section 43 of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/21/2427

Re: Property at Flat 1/1, Western Harbour Breakwater, Edinburgh, EH6 6PZ (“the Property”)

Parties:

Heather Burnside, 29 Whitehill Village, Dalkeith, EH22 2QD (“the Applicant”)

Dawn Morrison, Flat 28, 3 Merlin Crescent, Edinburgh, EH5 1GU (“the Respondent”)

Tribunal Member:

Ruth O'Hare (Legal Member)

Background

- 1** Reference is made to the decision of the Tribunal dated 21 January 2022 in terms of which the Tribunal made an order for payment against the Respondent in favour of the Applicant in the sum of One thousand five hundred and sixty nine pounds and eight pence (£1569.08).
- 2** On 26th January 2022 the Tribunal received a time to pay application from the Respondent offering payments at the rate of £50 per month, a copy of which is appended to this decision. The time to pay application was not before the Tribunal when it took its decision of 21st January 2022. The Tribunal therefore proposed to review its decision in order to consider the Respondent's time to pay application.
- 3** A copy of the application was intimated upon the Applicant. The Applicant's Representative responded by email dated 7 February 2022. In summary the Applicant's position was that the Respondent had been given the opportunity to address the payment proposal at the hearing and had not done so. No explanation had been put forward as to why this was the case. The Applicant had complied with the timescales and further proceedings would incur additional costs. The Applicant's Representative concluded by stating that the factual matters in the Respondent's time to pay application required a hearing

to be fixed in order that these could be properly examined and considered by the Tribunal.

Relevant Legislation

- 4 The provisions regarding review of a Tribunal decision are contained with Rule 39 of the Procedural Rules:-

“39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must—

(a) be made in writing and copied to the other parties;

(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—

(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and

(b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal’s provisional views on the application.

(5) In accordance with rule 18, the decision may be reviewed without a hearing.

(6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016 for making an application for permission to appeal.”

43 Review of decisions

(1) Each of the First-tier Tribunal and the Upper Tribunal may review a decision made by it in any matter in a case before it.

(2) A decision is reviewable—

(a) at the Tribunal's own instance, or

(b) at the request of a party in the case.

(3) But—

(a) there can be no review under this section of an excluded decision,

(b) Tribunal Rules may make provision—

(i) excluding other decisions from a review under this section,

(ii) otherwise restricting the availability of a review under this section (including by specifying grounds for a review).

(4) The exercise of discretion whether a decision should be reviewed under this section cannot give rise to a review under this section or to an appeal under section 46 or 48.

(5) A right of appeal under section 46 or 48 is not affected by the availability or otherwise of a review under this section.

44 Actions on review

(1) In a review by the First-tier Tribunal or the Upper Tribunal under section 43, the Tribunal may—

(a) take no action,

(b) set the decision aside, or

(c) correct a minor or accidental error contained in the decision.

(2) Where a decision is set aside by the First-tier Tribunal in a review, it may—

(a) re-decide the matter concerned,

(b) refer that matter to the Upper Tribunal, or

(c) make such other order as the First-tier Tribunal considers appropriate.

(3) If a decision set aside by the First-tier Tribunal in a review is referred to the Upper Tribunal, the Upper Tribunal—

(a) may re-decide the matter concerned or make such other order as it considers appropriate,

(b) in re-deciding that matter, may do anything that the First-tier Tribunal could do if re-deciding it.

(4) Where a decision is set aside by the Upper Tribunal in a review, it may—

(a) re-decide the matter concerned, or


(b) make such other order as it considers appropriate.

(5) In re-deciding a matter under this section, the First-tier or Upper Tribunal may reach such findings in fact as it considers appropriate.”

Reasons for Decision

- 5** The Tribunal determined it would be appropriate to review its decision in order to consider the time to pay application submitted by the Respondent. The Tribunal noted that at the rate proposed by the Respondent it would take approximately two and a half years to clear the debt owed. The Tribunal did not consider this to be a reasonable proposal and therefore, having reviewed its decision, the Tribunal ultimately determined to take no action. The Tribunal declined to fix a hearing on the matter on the basis that the consideration of the issues before it was primarily a matter of judicial discretion and it had sufficient information before it upon which to make a decision.

- 6** The decision by the Tribunal of 21 January 2022 will therefore stand alongside the order made against the Respondent in the sum of £1569.08. There would of course be nothing to prevent parties from entering into discussions regarding a payment arrangement for the debt owed out with these proceedings.

 **Ruth O'Hare**

Legal Member

Date