

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision under Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) ("the Procedure Rules") for recall of a decision.

In connection with

Chamber File Reference number: FTS/HPC/CV/18/1084

Re: Property at Flat B 53 Rose Street Aberdeen AB10 1UB ("the Property")

The Parties:

Mr Daniel Buda, 39/6 Comely Bank, Edinburgh, EH4 1AG ("the Applicant")

Miss Oana Iosif, 49 Harehill Road, Bridge of Don, Aberdeen, AB22 8RH ("the Respondent")

Tribunal Members:

Jan Todd (Legal Member) and Melanie Booth (Ordinary Member)

DECISION

The Tribunal refuses the Application for recall made by the Applicant in terms of Rule 30 of the Procedure Rules.

BACKGROUND

1. The Applicant lodged an application on 30th April 2018 for a claim for damages and cleaning arising from the end of the tenancy of the Property between the Applicant and the Respondent. He claimed the sum of £2,504.63, narrating that "the deposit was not lodged correctly and was lost, the deposit has been awarded to the former tenant by this tribunal this is a genuine counterclaim for genuine expenditure suffered at the end of the former tenant's tenancy which I require to be recovered. I am also claiming

for costs regarding damage caused during the tenancy to the kitchen window.”

2. A hearing in the above application took place on 6th September 2019 at 2pm in the Glasgow Tribunal Centre. The Respondent attended and brought her husband Mr Rohan Baboolal as a witness. The Applicant did not attend. The Applicant along with the Respondent was advised of the date of the Tribunal Hearing by letter and recorded delivery letter as well as by e-mail. The Tribunal made a determination under S 16 of the Housing (Scotland) Act 2014 (“the Act”) and produced a statement of reasons for the decision (“the decision”). On 17th September the Tribunal issued its statement of decision with reasons.

Application for Recall

3. By e-mail dated 25th September and confirmed in further e-mails dated 26th September, the Applicant applied to the Tribunal for recall of the decision, review of the decision and permission to appeal the decision.
4. The Applicant in his first e-mail of 25th September asks “Please have this case recalled and reviewed in accordance with the procedure. I also seek permission to appeal. In the meantime please supply a payment order so that I can instruct a sheriff officer forthwith.”
5. The Tribunal Administration responded on 26th September asking which procedure he wished to apply for and providing guidance notes on the recall, review and permission to appeal procedures and also advising that no payment order was due as per the decision issued to the Applicant.
6. The Applicant responded stating:-

“As per point 7.

The Respondents previous deposit was returned to her as evidenced by documents passed into this Tribunal previously.

Please issue the payment order.”

The Applicant responded by e-mail again stating:-
this is not the case as per point 7.

I wish for the decision to be recalled and reviewed.

I also seek permission for this to be appealed.

Clearly evidence has been overlooked or ignored in the respondents favour as evidenced.

Another example of this: outcome details that my evidence was not supplied to the member in colour. Can you please explain this? All evidence was supplied to you in colour.”

On 7th October the Tribunal wrote to the Applicant noting
“that you have asked for the following in the above case:

- * a recall of the decision
- * a review of the decision and
- * an appeal of the decision.

A recall can only be granted where one party was not present at the Hearing which is the case here, namely you were not present at the Hearing. However Rule 30 of the Tribunal's Rules requires in paragraph 2 that

"An application by a Party to have a decision recalled must be made in writing to the First Tier Tribunal and must state why it would be in the interests of justice for the decision to be recalled."

The Tribunal requires that you advise why you think it would be in the interests of justice for the decision to be recalled given that you had plenty of notice of the Hearing and did not attend or request a postponement?

You are required to provide such reasons within 7 days failing which the Tribunal will consider your request on the information contained in the e-mails you have submitted 25th and 26th September.

7. The Applicant has not responded to this request so there is no further explanation of why he believes it would be in the interests of justice for the decision to be recalled.
8. The Applicant did not attend the Hearing on 6th September. The Applicant has not attended many of the previous Case Management Discussions held prior to the Hearing particularly the CMD's on 15th March or 26th April and has not responded to the Direction sent on 26th April.
9. The Tribunal is satisfied that the Applicant had proper intimation of the Hearing. The Applicant had been served with a copy of the notification of the Hearing by post recorded delivery, and finally by e-mail sent on 29th May 2019. The Applicant had then been contacted by the Tribunal administration on the morning before the Hearing as the respondent had enquired if it was still going ahead and this was copied to the Applicant with the response that the hearing was still proceeding. These messages were sent by e-mail to the Applicant. The Applicant e-mailed on the morning of the Hearing to enquire what hearing was happening and when advised, he stated he was working in Edinburgh all day and would not attend. He did not request a postponement.
10. The Applicant has not changed his address or e-mail address but has denied receiving notification of this hearing despite receiving the e-mail from Ms Hay of the Tribunal administration dated 5th September which was sent to the same e-mail address as the papers and intimation of the Hearing on 6th

September were sent to. The Tribunal was satisfied that records show that the Applicant has had due notice of the Hearing as he has been e-mailed with all the relevant details and notification of this hearing, which is his preferred method of service (as well as postal intimation) and that it was in the interests of the Parties and the overriding objective to proceed with the Hearing on 6th September.

11. In his application to recall the Applicant has provided no further explanation for his failure to attend or any reason why it would be in the interests of justice for the decision to be recalled.

The Applicant having shown no reason as to why it would be in the interests of justice for the decision to be recalled, the application for recall is refused.

Chairing Legal Member of the Tribunal
Dated: 23rd October 2019