



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 30 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/21/3192

Re: Property at Flat 3/3, 27 Elizabeth Street, Ibrox, Glasgow, G51 1SP (“the Property”)

Parties:

Ms Madeleine Farrand or Holtham, 114 Norse Road, Scotstoun, Glasgow, G15 9EQ (“the Applicant”)

Ms Maymunah Ilyas also known as Mrs Alyanah Abubakar, Mr Abubakar Warsi, formerly residing at Flat 3/3, 27 Elizabeth Street, Ibrox, Glasgow, G51 1SP and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members: Fiona Watson

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered the Applicant’s application for recall of the decision of the Tribunal dated 13 June 2022 (“the Decision”) in terms of Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) and determined that the Decision is recalled and the application remitted back to a Case Management Discussion.

- Background
- 1. An application was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking a payment order against the Respondent in relation to rent arrears accrued under a short assured tenancy agreement.

2. A Case Management Discussion (“CMD”) took place on 13 June 2022 by tele-conference. There was no appearance by, or on behalf of, either of the parties. The Applicant had been notified of the date of the CMD by letter and email dated 4 May 2022 sent to their representatives, Russells Gibson McCaffrey. Due to their current whereabouts being unknown, the application was served on the Respondents by way of website advertisement between 4 May 2022 and 13 June 2022, in terms of Rule 6A of the Rules.
3. Due to the failure by either party to appear or be represented, the Tribunal dismissed the application in terms of Rule 27(2)(b) of the Rules, in that the Applicant has failed to cooperate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly or fairly.

Application for Recall

4. On 24 June 2022 the Applicant’s representative emailed the Tribunal administration with an application for recall of the Decision, in terms of which they advised that the failure to appear at the CMD was entirely down to an administrative error on the part of the Applicants agent and not due to any fault or error on the part of the Applicant themselves.

Findings

5. The Tribunal considered matters in terms of the provisions of Rule 30 of the Rules which states as follows:

30 (1) In relation to applications mentioned in Chapters 4, 6, 8, 11 and 12 of Part 3 of these Rules, a party may apply to the First-tier Tribunal to have a decision recalled where the First-tier Tribunal made the decision in absence because that party did not take part in the proceedings, or failed to appear or be represented at a hearing following which the decision was made.

(2) 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.

(3) An application for recall may not be made unless a copy of the application has been sent to the other parties at the same time.

(4) Subject to paragraph (5), an application for recall must be made by a party and received by the First-tier Tribunal within 14 days of the decision.

(5) The First-tier Tribunal may, on cause shown, extend the period of 14 days mentioned in paragraph (4).

(6) A party may apply for recall in the same proceedings on one occasion only.

(7) An application for recall will have the effect of preventing any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined under paragraph (9).

(8) A party may oppose recall of a decision by— (a) lodging with the First-tier Tribunal a statement of objection within 10 days of receiving the copy as required under paragraph (3); and (b) sending a copy of the statement to any other party, at the same time.

(9) After considering the application to recall and any statement of objection, the First-tier Tribunal may— (a) grant the application and recall the decision; (b) refuse the application; or (c) order the parties to appear at a case management discussion where the First-tier Tribunal will consider whether to recall the decision.

6. The Tribunal determined that it is in the interests of justice that the application for recall of the Decision of the Tribunal dated 13 June 2022 is granted. The application will be remitted back to a Case Management Discussion on a date to be hereinafter fixed.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

F Watson

Legal Member/Chair

Date: 4 July 2022