



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/23/0042

Re: Property at 11E Sandeman Street, Dundee, DD3 7NP (“the Property”)

Parties:

Ms Lucy Picken, 11 Palmerston Road, Edinburgh, EH9 1TL (“the Applicant”)

Ms Veronica Ballantyne, 11E Sandeman Street, Dundee, DD3 7NP (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

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

- Background

The Applicant through her representatives lodged an application dated 5 January 2023 seeking a payment order for alleged rent arrears (the Application). After acceptance of the Application a Case Management Discussion (CMD) was heard by way of conference call on 24 April 2023. The date for the CMD was intimated to both parties. Notwithstanding the Respondent failed to appear or be represented. After hearing the Applicant’s representative, a payment order in the sum of £1,167.23 was granted.

It is that decision the Respondent seeks to recall by her representative’s email of 9 May 2023. The said email containing the application for recall has been intimated to the Applicant’s representative and, by email dated 10 May 2023, she has objected to the recall.

Following receipt of the Recall request, the Tribunal fixed a hearing in terms of Rule 30(9)(c) of the Tribunal’s rules of procedure to consider the recall request and the reasons for same. The hearing under Rule 30(9)(c) was scheduled for 3 July 2023 to be heard by way of telephone conference. That date was intimated to the parties.

- Recall

The Applicant was represented by a Mrs Hazel Young or Rockford Properties. The Respondent was represented by a Rebecca Falconer, solicitor of the Dundee Law Centre. In addition, a Collette Goodman, a trainee solicitor, attended with Mrs Falconer to observe but played no part in the proceedings.

The application for recall has been intimated 1 day too late. Mrs Falconer was asked to explain why the recall had been lodged late. She explained that the Respondent had sought an appointment with her office and the first available one had been on 5 May 2023. Thereafter, her office was closed on 8 May 2023 and the application for recall was lodged the next day, albeit one day late. It is understood that it was not until the Respondent received the decision from the CMD on 24 April 2023 that the Respondent sought help. Prior to that she had “buried her head in the sand”. Mrs Young objected to the application for recall being lodged late but offered no substantive reasons for that objection. However, Mrs Young did explain that the arrears of rent had increased since the CMD on 24 April 2023 and were now £1,359.54 and indicated that she would have thought that, if the Respondent was concerned about the proceedings, she would have sought to address the arrears and not have them increase.

The Tribunal resolved to allow the application for recall albeit late and therefore extended the period for seeking recall by one day in terms of Rule 30(5) of the Tribunal’s rules of procedure.

Thereafter Mrs Falconer was asked to address the Tribunal on whether it was in the interest of justice that the Payment Order granted on 24 April 2023 should be recalled. She spent some time detailing the Respondent’s financial circumstances and current entitlement to benefits as well as possible future entitlements. However, in relation to the arrears, Mrs Falconer indicated that she had been able to carry out some investigation into the payments that it had been claimed in the letter seeking recall dated 9 May 2023 may not be accounted for. She explained that the Respondent had in fact received the payments in November and December 2018 direct but had not paid them over to the Applicant. She therefore indicated that the arrears as at 24 April 2023 were £1,167.23 and that further arrears had accrued as detailed by Mrs Young and that she accepted the figure of £1,359.54 as the current arrears. Mrs Young indicated that she was opposed to recall and had no intention at this stage to seek to amend the sum sought to reflect current arrears.

- Reasons for Decision

Whilst the Tribunal extended the period for the recall to be lodged by one day, and allowed the application for recall to be received albeit late, standing the fact that the arrears as at 24 April 2023 were now accepted by Mrs Falconer on behalf of the Respondent and that no other defence to the Application was suggested, the Tribunal decided that it was not in the interests of justice to allow recall of the decision to grant a Payment Order on 24 April 2023. As such, the Payment Order dated 24 April 2023 stands as does the decision of the same date.

- Decision

The application for recall is refused.

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.

Rory Cowan

Rory Cowan

Legal Member/Chair

Date

3 July 2023