



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

Chamber Ref: FTS/HPC/EV/23/1914

Re: Property at Flat 0/2, 574 Paisley Road West, Glasgow, G51 1RF (“the Property”)

Parties:

Mr Atif Ahmed, 7 Parkholm Quadrant, Glasgow, G53 7ZH (“the Applicant”)

Mr Ashiq Hussain, Flat 0/2, 574 Paisley Road West, Glasgow, G51 1RF (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants the application for recall and recalls the decision.

Background

1. A Case Management Discussion (“CMD”) for this application took place by telephone conference on 17th October 2023. The Applicant was in attendance. The Applicant’s representative, Mr Baig, was also in attendance. The Respondent was not in attendance. The Tribunal granted an order for eviction. A decision dated 17th October 2023 was issued to the parties.
2. By email dated 31st October 2023, the Respondent’s representative lodged an application for recall of the decision, stating the following:

We are informed by Mr Hussain that he did receive documents from the Tribunal however he does not have enough knowledge of the Scottish Legal system. He did try to obtain legal advice however he did not manage to instruct a solicitor until 19/10/2023 when he instructed our firm in this matter. He therefore could not attend the Case Management Discussion on 17/10/2023.

On our client's behalf we request a recall of decree passed by this Tribunal on 17/10/2023. Our client is of the view that it is not reasonable to evict him and his family under the Housing (Scotland) Act 1988.

Proposed defence/answer:

The respondent is living at the above property with his wife and two young (under 16 years old) children. His daughter studies in S5 and both children attend a local secondary school. Removing them from their house at this stage could affect their education. The Respondent suffers from severe health issues. He had a bypass heart surgery in the past and he struggles to walk for long or use stairs. He has been trying to find an alternative tenancy through the housing association however he is unable to find a property suitable to his requirements. He is looking for three bedrooms house on a ground floor.

The Appellant claimed that he wishes to sell the property as he cannot afford the mortgage on the property and it is not commercial viable for him to continue to rent out. The Appellant however has not provided any evidences to support his claim. He did not provide any evidences to suggest that he has started the process of selling his property or not his mortgage statements.

Under the circumstances, we request to recall the decree issued by this tribunal on 17/10/2023 in the interest of justice and a case can be listed for a further Case Management discussion.

3. No statement of objection to the recall was lodged with the Tribunal by the Applicant in terms of Rule 30(8)(a).

Decision and reasons

4. The Tribunal has decided to grant the application and recall the decision.
5. The decision was made in the absence of the Respondent due to his failure to appear at the CMD.
6. The Tribunal considered the representations made on behalf of the Respondent. It would seem that the Respondent may have a stateable defence. The Tribunal considered it would be in the interests of justice for the decision to be recalled.
7. In order to avoid any further unnecessary delay, the Tribunal has decided to continue the application to an evidential hearing, rather than set down a further CMD.
8. Parties must be in a position to address the Tribunal fully on all matters relating to their respective position at the hearing. The Tribunal will expect to

be addressed on whether the ground of eviction is met, and whether it is reasonable, in all the circumstances, to grant the order.

9. All documents to be relied upon at the hearing must be listed in an inventory of productions, with each page and document numbered. All documents must be lodged no later than 14 days before the hearing, and copied to the other parties.
10. All witness lists must be lodged, with full contact details for witnesses, no later than 14 days before the hearing, and copied to the other parties.

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.

H. Forbes

Legal Member/Chair

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20th November 2023

Date