



Review of Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/1338

Re: Property at 169 Queens Drive, Queens Park, Glasgow, G42 8QY (“the Property”)

Parties:

Stephen Wright, 0/2 19 Sherbrooke Avenue, Pollokshields, Glasgow, G41 4HF; Laura Chong, 37 St Gabriels Road, London, NW2 4DT (“the Applicants”)

Michael Hastings, Miryam Lacey, both of 169 Queens Drive, Queenspark, Glasgow, G42 8QY; 169 Queens Drive, Queens Park, Glasgow, G42 8QY (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondents commencing on 1 March 2019.
2. The application sought an order against “Michael Hastings” and “Miryam Hastings”. A Decision in the application was issued on 21 August 2024, further to discussion at a case management discussion (“CMD”) on that date. All parties were represented at the CMD. An order for eviction was also made on 21 August 2024, suspended until 12 noon on 22 November 2024.
3. The application designed the Respondents as “MR AND MS MICHAEL AKA MIKE AND MIRYAM HASTINGS”. The application was thus placed on the Tribunal’s system with the Respondents designed as “Michael Hastings” and

“Miryam Hastings” both at the same address and the Decision and order were issued using those designations.

4. Reference is made to the Decision for the background on the application and the grounds for the Decision but, in regard to the issues of review, the material points are:
 - a. A Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 22 November 2023 and served upon the Respondents by Sheriff Officer on that date. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 15 February 2024.
 - b. The Respondents had not left the Property by the date of the CMD.
 - c. Further to discussion at the CMD, prompted by the Respondents’ submissions, parties agreed that they were content with an order for eviction being issued at the CMD provided there was a three-month suspension. On consideration, we were satisfied to grant that.
5. We included the following observation in paragraph 7 of our Decision:

We also noted from the submissions and productions that the second Respondent was said to be Ms Miryam Lacey, not Ms Miryam Hastings. (No motion was made by either party to amend the parties to the application.)

We note that the Tenancy Agreement was signed by the Respondents designating themselves as “MIRYAM R LACEY” and “MIKE HASTINGS”, and the Notice to Leave in the application papers was addressed to “Miryam Lacey and Michael Hastings aka Mike Hastings”. The Sheriff Officer’s Certificate of Execution of the Notice to Leave was in such terms. In the absence of any request for amendment, and with parties agreed on the disposal of the application as presented, we were however satisfied to grant the order as sought against the Respondents, with the second named Respondent designed as “Miryam Hastings”. It is not uncommon for a party before the Tribunal to utilise different surnames in different family or business contexts.

Request for review

6. On 22 August 2024, the Applicants’ agent wrote to the Tribunal by email seeking “amendment of the designation of the second named Respondent from Miryam Hastings to Miryam Lacey”. This was brought to our attention on 4 September 2024 and we instructed the clerk to respond to the Applicants’ agent seeking authority for an amendment of an order after it had been granted, in the absence of any obvious error in the terms of the order. We also drew attention in the email to the broad powers of the Tribunal of review in terms of Rule 39. An email in such terms was issued to the Applicants’ agent on that date.
7. The Applicants’ agent provided a more detailed request “for review and amendment” on 5 September 2024. This again sought an amendment of the order so that the designation of the second named Respondent was changed from “Miryam Hastings” to “Miryam Lacey” on the grounds that “an administrative error has taken place” leading it both to be incorrect in the application and then not addressed at the CMD. On the face of it, this email was sent only to the

Tribunal and did not appear to have been intimidated upon the Respondents' agent. Regrettably there was some delay in the email of 5 September 2024 being passed to us for consideration and crossed over by the Tribunal's clerk to the Respondents' agent.

8. On 20 September 2024, on our request, emails were sent to parties indicating that our provisional view would be to amend the order if there was no opposition by the Respondents. On 24 September 2024, the Respondents' agent confirmed to the Tribunal by email that there was no opposition to an amendment of the second named Respondent's name in the order provided there was no alteration to the suspension of the order. (No discussion had been made of any other amendment but, in any case, the Applicants' agent emailed to confirm that no such amendment of the suspension was sought.)

Decision on Review

9. The Tribunal's powers in Rule 39 in regard to review are as follows:

(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(8) for making an application for permission to appeal.

(9) Paragraph (1) does not apply to an appeal made under section 92 (appeal against refusal to register or removal from register) of the 2004 Act.

10. After a fashion, we are satisfied that the time-table and procedural steps of Rule 39 have been complied with. We are satisfied that it may be in the interests of justice for us to review and consider alteration of the wording of an order, even where it is granted of consent. We are satisfied that, in light of parties' correspondence, we should consider the review without a further hearing.
11. In this case, we accept that it was administrative error not to include the second named Respondent's correct surname in the application (especially where all other papers included the correct surname) and that this error continued when the Applicants' agent failed to address the point at the CMD despite it being mentioned. The Respondents have no objection to the correction being made and we think it is in the interests of justice to ensure the order is reviewed so as to allow the second named Respondent's surname to be corrected, so that the order is in terms that both parties now agree upon and which is clearly more accurate.

Decision on the review

12. In all the circumstances, we will alter the second named Respondent's surname on the order from "Hastings" to "Lacey" and otherwise leave all parts of the order unchanged. A revised order shall be issued along with this Decision.
13. Please note that, notwithstanding the date of the revised order, there is no alteration of the time-limits for appeal which should be calculated from the original date of Decision.

Joel Conn

25 September 2024

Legal Member/Chair

Date