



**Decision on Application for Recall under Rule 30 of the First-tier Tribunal
Housing and Property Chamber Rules of Procedure 2017**

Chamber Ref: FTS/HPC/CV/23/3924

Re: Property at Flat 0/5, 2 Hanson Park, Glasgow, G31 2HA (“the Property”)

Parties:

Mr Kenneth Kennedy, Mrs Margaret Kennedy, Rannoch, The Lane, Dullatur, G68 0AU (“the Applicant”)

Mr Robert Hann, Ground 1, 519 Alexander Parade, Glasgow, G31 3EP (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the Respondent’s request for recall of the order for payment made by the Tribunal on 29 November 2024.

Background

1. By application to the Tribunal the Applicants sought an order for payment against the Respondent in respect of unpaid rent arrears in the sum of £10296 under Rule 70 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 16 of the Housing (Scotland) Act 2014.
2. The application was referred to a Case Management Discussion (“CMD”) on 10 September 2024, to take place by teleconference. Following a request from the Respondent the CMD was postponed to the 29 November 2024. Notification was given to the parties. On 4 November 2024 the Respondent submitted another request to postpone the CMD but this was refused by the Tribunal.
3. The CMD took place on 29 November 2024. Having heard submissions from the Applicants the Tribunal determined to grant a payment order against the

Respondent in the sum of £10296. Reference is made to the decision of the Tribunal dated 9 December 2024.

4. On 2 January 2025 the Tribunal received an email from the Respondent advising that he had been unable to attend the CMD due to his ill health. On 16 January 2025 the Tribunal emailed the Respondent querying whether he was requesting a recall or review of the decision, or permission to appeal. The Tribunal provided a link to the guidance on these remedies. The Respondent wrote to the Tribunal that same day advising that he was seeking a recall of the order. In summary he explained that he had been left without heating and hot water for 12 months, which had led to a decline in his health and the loss of his job. He stated that the Applicants had increased the rent. He had no assets and no job.
5. The Respondent's request for recall was intimated upon the Applicants. On 3 February 2025 the Tribunal received written representations from the Applicants. They objected to the request for recall. They advised that they understood the Respondent had been on holiday on the date of the CMD. He had been given the opportunity to appoint a representative to appear in his absence. The Applicants summarised the issues with the tenancy. They explained that the Respondent's rent had not been increased since 2016 and was below market value. The Respondent had abandoned the property on 11 December 2023.
6. In light of the Applicants' objection, the Tribunal determined to hold a further CMD to hear submissions from the parties prior to reaching a decision on the request for recall.

The CMD

7. The CMD took place on 24 March 2025 by teleconference. Both parties joined the call.
8. The Tribunal heard submissions on the request for recall. The following is a summary of the key elements of the discussion relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.
9. As a preliminary matter, the Applicants noted that the application for recall had been made after the fourteen day deadline provided for in the Rules. The Respondent explained that he had been ill, which was the reason for the delay.
10. The Respondent explained that he had not attended the CMD on 29 November 2024 as he had been ill in hospital with pneumonia. He took issues with the rent statement produced by the Applicants as he did not believe it was accurate. The Applicants had left him without heating and hot water for thirteen months. This was a breach of housing legislation. The property was inhabitable. The Respondent had stopped paying his rent as a result. Eventually he left the property in December 2023. He had since lost his job and had been diagnosed with a terminal illness. His life expectancy was less than a year.

11. The Respondent stated that he wished to take action against the Applicants for slanderous comments they had made to his neighbours. The Tribunal explained that it could not deal with such matters as part of this application.
12. The Applicants explained that the Respondent had never been left without heating or hot water. The boiler in the property had to be replaced in August or September 2023 following a change in legislation for flatted developments. The contractor who attended to the work found that the Respondent had tampered with the boiler. The property had been in a terrible condition at the end of the tenancy.
13. The Applicants advised that they had viewed on photos on Facebook showing the Respondent on holiday on or around 29 November 2024. The Tribunal asked the Respondent to confirm if that was correct. The Respondent advised that he could not recall the dates of his holiday. He thought he was definitely in hospital at the time.
14. The Tribunal asked the Respondent why he had continued to keep his tenancy for a period of thirteen months if the property was uninhabitable. The Respondent advised that he had nowhere else to go. He had been staying with friends. The Respondent conceded, following comments from the Applicants, that he had in fact had an electric shower throughout the period, but he had to go to a neighbouring property for baths. The Tribunal also noted that the Respondent had left the property after a new boiler had been installed by the Applicants in September 2023.
15. The Tribunal went through the rent statement with the parties, noting that the figures appeared to align with the contractual rent for the property. The Respondent conceded that this appeared to be the case. He advised that he was not the sort of person who would not pay rent and he would like to reach some form of settlement with the Applicants regarding the matter, perhaps a monthly payment.

16. Relevant Legislation

The provisions regarding recall of a Tribunal decision are contained within the Procedural Rules:-

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

Reasons for Decision

17. The Tribunal carefully considered the application for recall, the Applicants' objection and the submissions from the parties at the CMD. The Tribunal also took into account the previous written representations made by the parties in this case.
18. The decision in this case was issued to parties on 10 December 2024. The Respondent's initial request for recall of the order was received on 2 January 2025. In terms of Rule 30(4), it should have been received by 24 December 2024. However, the Tribunal considered it could allow the request to be received late, taking into account the potential impact of the festive period at that time.
19. The Tribunal went on to consider whether to recall the order made on 29 November 2024. The Tribunal noted that the Respondent's reasons for failing to attend the CMD on that date did not fully align with the information provided to the Tribunal with the postponement request he submitted on 4 November 2024, nor the evidence provided in support of the application for recall. The Applicants had instead suggested that he was on holiday at the time, with reference to photographs on Facebook. The Respondent was unable to confirm the dates of his holiday and appeared reluctant to disclose this information. The Tribunal was not therefore satisfied that his failure to attend the CMD in November was due to him being ill in hospital.

20. The Respondents submissions during the CMD were also difficult to follow. The Tribunal found it hard to believe that he would have retained the tenancy for 13 months if he believed the property was inhabitable. He had also chosen to leave after the boiler was replaced. The Respondent had previously been directed to provide a response to the application prior to the Tribunal's decision, and had submitted various documents. These did not support the defence he had outlined. There were inconsistencies in his submissions. He conceded during the CMD that despite stating he had no hot water, there had been an electric shower available to him throughout the period. He challenged the rent statement produced by the Applicants before conceding that the figures appeared to have been calculated correctly. Towards the end of the CMD he expressed a wish to reach a payment arrangement with the Applicants. The Tribunal was not therefore satisfied that he had an arguable defence to the application.
21. The Applicants submitted the application to the Tribunal in November 2023. The Respondent previously had the benefit of a postponement of the first CMD to allow him further time to prepare his response, and to arrange representation if required. The Tribunal advised him to do the latter on a number of occasions. He failed to avail himself of this opportunity.
22. The Tribunal therefore concluded that it would not be in the interests of justice for the order to be recalled for the reasons set out above.

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.

R. O'Hare

18 April 2025

Legal Member/Chair

Date