



Decision with Statement of Reasons 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 (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/23/4165

Re: Property at Chapelhill Farmhouse, Glencaple, Dumfries, DG1 4QT (“the Property”)

Parties:

David John Pennell, Lady Clare Therese Kerr and Nigel Gordon Helm Draffan, the trustees acting under the will of the Rt Hon Mary Katherine Lady Herries of Terregles dated 20 February 2015, as varied by Deed of Appointment and Retirement of Trustees dated 29 June 2018 (The Trustees of of The Caerlaverock Fund), Lantonside, Glencaple, DG1 4RQ (the Applicants)

Messrs. Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow, G1 3AG (the Applicants’ Representative)

Mr Gary Gibson and Mrs Kelly Gibson, The Anchor Hotel, Kippford, Dalbeattie, DG5 4LN (the Respondents)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal), having considered:

- (i) the Respondent’s application of 14 May 2024 for recall of the tribunal’s decision of 2 May 2024 to make a payment order in the sum of EIGHT THOUSAND ONE HUNDRED AND EIGHTY EIGHT POUNDS AND 52 PENCE (£8188.52) STERLING with interest on that sum at the rate of five per cent above Bank of Scotland base rate from 2 May 2024 until payment;**
- (ii) the Applicants’ Representative’s statement of objection dated 29 May 2024;**
- (iii) the written submissions of the Respondents dated 19 August 2024;**
- (iv) the written submissions on behalf of the Applicants dated 11 September 2024;**
- (v) the second Respondent’s failure to appear at the Case Management Discussion in relation to the recall application on 4 February 2025,**

- having been notified and her failure to provide an explanation in response to a Direction dated 4 February 2025 from the tribunal;
- (vi) both Respondents' failure to appear at the Case Management Discussion on 8 May 2025; and
 - (vii) the Applicant's Representative's oral submissions at the Case Management Discussion on 8 May 2025;

refused the Respondents' application to recall the said decision of the tribunal in terms of Rule 30(9)(b) of the 2017 Rules.

Statement of Reasons

Procedural background

1. On 2 May 2024, the tribunal made an order for payment by the Respondents to the Applicants for the sum of EIGHT THOUSAND ONE HUNDRED AND EIGHTY EIGHT POUNDS AND 52 PENCE (£8188.52) STERLING, with interest thereon at the rate of five per cent per annum above Bank of Scotland base rate, running from the date of the decision of the First-tier Tribunal to grant this order, being 2 May 2024, until payment. The tribunal's decision with statement of reasons dated 2 May 2024 and order for payment of the same date are referred to for their full terms.
2. On 14 May 2024, the Second Respondent submitted a joint recall application stating that the Respondents had not been served with the Application and notification of the CMD.
3. The tribunal's administration made enquiries with the Sheriff Officers who were instructed to serve the documents and who provided the Certificate of Intimation. The Sheriff Officers confirmed that they had telephoned the First Respondent on 25 March 2024 and spoken to him about service and that the First Respondent stated that the documents could be served on him and his wife, the second Respondent, at the given address, which was their business premises, a hotel in which they both worked. The Sheriff Officers attended on 2 April 2024 and served the documents by leaving them in the hands of an employee Nancy Corrigan. A Certificate of Service was produced to the tribunal.
4. On 29 May 2024, the Applicant's Representative lodged opposition to the recall application.
5. On 6 August 2024, the tribunal issued a Direction to both parties.
6. On 19 August 2024, the Respondents lodged joint submissions in response to the Direction.

7. On 11 September 2024, the Applicant's Representative lodged submissions in response to the Direction.
8. A Case Management Discussion was fixed for 10 January 2025 in terms of Rule 30(9)(c) of the 2017 Rules. The Applicant's Representative was notified of the CMD. Both Respondents were notified with details of the CMD.
9. On 9 January 2025, the Respondents made a joint application for postponement of the CMD stating that they were abroad on holiday in the Canary Islands and had intended to join the CMD the following day by telephone but that they had been having connectivity issues since arriving. The tribunal considered the Respondents' postponement application, as well as the location of the Respondents and decided to postpone the CMD but gave an instruction to the tribunal's administration that it should be re-fixed as soon as possible having regard to the history of the case.
10. The CMD was postponed to 4 February 2025 at 1000h by teleconference. The Applicants' Representative was notified by email. The Second Respondent Mrs Gibson was notified by email on 14 January 2025. The tribunal attempted to issue notification to the First Respondent Mr Gibson by Royal Mail recorded delivery on 14 January 2025, but did not receive confirmation of service.
11. The CMD took place on 4 February 2025 at 1000h. Ms Wooley from the Applicants' Representative attended. The First and Second Respondents did not attend. No contact was made by the Second Respondent Mrs Gibson to explain her absence. The Legal Member instructed the clerk to check the position regarding service on the first Respondent, Mr Gibson. The tracking number of the recorded delivery was checked by the tribunal's administration. The item was not confirmed as having been delivered. The message said *"An update will only be provided when we attempt to deliver your item"*.
12. The Legal Member was not satisfied that the First Respondent had been notified of the CMD and did not proceed in absence of the Respondents in terms of Rule 29 of the 2019 Rules.
13. The Legal Member adjourned the CMD to a date to be fixed and notified to all parties, with an instruction that it should be fixed as soon as possible having regard to the history of the case; and that the tribunal's administration should ensure that the First Respondent is served with notification. Ms Wooley provided unavailable dates which were noted by the Clerk.

14. The CMD was fixed for 24 March 2025. Due to an administration error no parties were notified and the CMD was cancelled and re-fixed for 8 May 2025 at 1000h by teleconference.
15. Notification of the CMD was sent on 26 March 2025 to the First Respondent by special delivery mail with a receipt email issued; and to the Second Respondent by email to the address used by her in the proceedings.

CMD by teleconference: 8 May 2025 at 1000h

16. A CMD took place by teleconference on 8 May 2025 at 1000h.
17. The Respondents did not appear and the CMD took place in their absence in terms of Rule 29 of the 2017 Rules, because the tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with. The tribunal proceeded with the application upon the representations of the party present and all the material before it.
18. Ms Wooley requested that the tribunal refuse the Application for recall and uphold the original payment order against the Respondents. She noted that it was granted a year ago and that it is regretful that it has taken so long to reach this stage. She submitted that the Respondents have not provided a suitable explanation as to why service of the original tribunal case papers was not properly effected. She further submitted that the Respondents have not shown that it is in the interests of justice for the decision and order to be recalled. She noted that the Respondents have claimed in their written submissions that they were withholding rent because of repairs issues and she submitted that this contradicts the correspondence which has been lodged. She referred to lodged correspondence between the Applicant's agents and the Respondents, wherein the Respondents were making multiple promises to pay the arrears.
19. Ms Wooley stated that there has been no correspondence from the Respondents to the Applicants or her firm since the order was made on 2 May 2024. The arrears of £8188.52 plus interest remain outstanding.
20. Ms Wooley submitted that the application for recall has no basis and any defence which the Respondents put forward to the original application is not founded. She invited the tribunal to refuse the application for recall and uphold the original decision to make the payment order.

Discussion

21. Rule 30 of the 2017 Rules provides:

“(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.

...

(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.”

22. The Respondents have failed to insist on their application by failing to attend CMDs on 4 February 2025 (Second Respondent, Mrs Gibson) and 8 May 2025 (both Respondents).

23. In any event, it is not in the interests of justice to recall the decision of 2 May 2024 to make a payment order by the Respondents to the Applicants for the sum of EIGHT THOUSAND ONE HUNDRED AND EIGHTY EIGHT POUNDS AND 52 PENCE (£8188.52) STERLING, with interest thereon at the rate of five per cent per annum above Bank of Scotland base rate, running from the date of the decision of the First-tier Tribunal to grant this order, being 2 May 2024, until payment.

24. The Respondents have failed to establish that service of the Application and notification for the original CMD was not properly effected.

25. In any event, no relevant defence has been disclosed which could have been advanced had the Respondents appeared at the original CMD on 2 May 2024. The written submissions lodged by the Respondents that they withheld rent due to repairs issues are entirely contradicted by the correspondence between parties in which the Respondents discussed the effect of the Covid-19 pandemic on the business and made repeated promises to clear the arrears. No mention was made in any lodged correspondence of repairs issues. No evidence has ever been produced by the Respondents in relation to the extent of any repairs issues, that they notified the Applicants of the same and that they intended to withhold rent, or

to prove that the rent allegedly withheld was held by the Respondents in a separate account.

26. Therefore, the tribunal therefore refused the Respondent's application for recall of the tribunal's decision of 2 May 2024, in terms of Rule 30(9)(b) of the 2017 Rules.

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.

Susanne Tanner

16 May 2025

**Susanne L. M. Tanner K.C.
Legal Member/Chair**