Housing and Property Chamber
First-tier Tribunal for Scotland

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 2017 ("the Rules")

Chamber Ref: FTS/HPC/CV/24/1158

Re: Property at Marnoch, Barchain Farm, Buittle, Castle Douglas, DG7 1NN ("the Property")

Parties:

Mr Andrew Sturgess, 27 Dalkeith Avenue, Glasgow, G41 5LF ("the Applicant")

Ms Evaline Henderson, Marnoch, UNKNOWN, UNKNOWN ("the Respondent")

Tribunal Members: Ruth O'Hare, Legal Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that it would not be in the interests of justice to recall the order made by the Tribunal on 13 December 2024.

The Tribunal therefore refused the Respondent's application for recall.

Background

1. This is an application for rent arrears raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. On 3 April 2024, the Tribunal accepted the application under Rule 9 of the Regulations.

2. The application was referred to a Case Management Discussion ("CMD") on 10 June 2024. Notification of the CMD was unable to be served on the Respondent as her whereabouts were unknown. The application was therefore served on the Respondent by advertisement in terms of Rule 6A of the Rules.

3. The Tribunal proceeded with the CMD on 10 June 2024 at 10am. There was no appearance by or on behalf of either the Applicant or the Respondent. The Tribunal subsequently issued its decision dismissing the application.

4. On 21 June 2024 the Tribunal received a request for recall of the decision from the Applicant. The Tribunal thereafter determined to recall its decision of 10 June 2024, it being

in the interests of justice to do so. Reference is made to the decision of the Tribunal dated 5 July 2024 in this regard.

5. The second CMD took place on 13 December 2024. The Applicant was represented by Mr Kenneth McLean of Pollok and McLean Solicitors. There was no appearance by or on behalf of the Respondent. The Tribunal had before it a certificate of service confirming that notification of the CMD had been given to the Respondent in terms of Rule 6A and 17(2) of the Regulations by service on the Tribunal website. The Tribunal therefore determined to proceed in her absence. Having heard submissions from Mr McLean, the Tribunal determined to make an order for payment in the sum of £1275. Reference is made to the decision of the Tribunal dated 13 December 2024 in this regard.

6. On 7 March 2025 the Tribunal received an email from Colledge and Shields Solicitors on behalf of the Respondent with an application for recall. In summary, the Respondent was unaware of the proceedings until receiving charge for payment on 17 February 2025. She sought recall of the order granted in her absence. She disputed the amount due. It was acknowledged that the application for recall was outwith the 14 day period provided for under Rule 30, however there was justification for extending the period on the basis that the Respondent had not become aware of the application until recently.

7. The application for recall was intimated upon the Applicant's representative. On 18 March 2025 the Tribunal received an email from Pollock McLean Solicitors on behalf of the Applicant. In summary they invited the Tribunal to refuse the application for recall. The Applicant had made diligent enquiries to trace the Respondent before proceeding with the application, and the application for recall was out of time. Furthermore there was no merit in probable cause in the Respondent's defence.

8. The Tribunal determined that it did not have sufficient information to reach a decision on whether to recall the order, based on the written representations before it. The Tribunal therefore decided to order the parties to attend a CMD under Rule 30(9)(c) of the Rules where the Tribunal could make further inquiries before reaching a decision on the application for recall.

9. The CMD was scheduled to take place on 15 July 2025 by teleconference. The Tribunal gave both parties notice of the CMD under Rule 17(2) of the Rules.

The CMD

10. The CMD took place on 15 July 2025 by teleconference. The Applicant was represented by Mr McLean. The Respondent was represented by Ms Gold, Solicitor of Colledge and Shields.

11. The Tribunal heard submissions from both parties on the application for recall. The following is a summary of the key elements of the submissions and is not a verbatim account.

12. Ms Gold acknowledged that the application for recall had been made after the fourteen day timescale under Rule 30 of the Rules. She explained that the Respondent had only become aware of the order when she received a charge for payment on 17 February 2025. The

Respondent had not therefore had the opportunity to put her position forward regarding the application. The Respondent accepted that she owed £850 in rent arrears. However she disputed the remaining amount. The Applicant had not returned her tenancy deposit. Instead the deposit had been used towards damages which the Respondent disputed. The deposit scheme had never been in touch with the Respondent regarding the repayment of her deposit. If she had been contacted by the scheme she would have disputed the amount due. The Applicant had been charged with stalking the Respondent and had behaved in a threatening and abusive manner towards her.

13. Mr McLean advised that the Applicant had made diligent inquiries to trace the Respondent, to no avail. The Applicant had therefore following the appropriate process under the Rules which was perfectly legal. The Applicant had subsequently traced the Respondent, which led to the service of the charge. The application for recall should therefore be refused as it was not timeous. With regards to the merits of the case, Mr McLean acknowledged the Applicant's acceptance that £850 was due. He advised that he had recently been made aware of an email from the deposit scheme confirming they had been in contact with the Respondent, and the Respondent had allowed the deposit to be repaid to the Applicant. The Respondent had stated that she did not want to get into a dispute with the Applicant. The deposit scheme would not have released the deposit to the Applicant if they were not authorised to do so. There was no case to answer.

14. The Tribunal adjourned the CMD for Mr McLean to send a copy of the email from the deposit scheme to both the Tribunal and Ms Gold. Upon resuming the CMD, Ms Gold confirmed that she had spoken with the Respondent regarding the email. The Respondent had forgotten about the correspondence with the deposit scheme. She now recalled that she had advised the scheme that she disagreed with the Applicant's claim, but did not wish to dispute it. The Respondent's position remained the same. She believed the deposit should have been applied to the rent arrears, not the damages which were unfounded.

15. The Tribunal asked Ms Gold if she wished further time to discuss matters with the Respondent given the terms of the email from the deposit scheme. Ms Gold confirmed that she was content for the Tribunal to reach a decision on the application for recall, based on the information before it.

Reasons for decision

16. The Tribunal considered the wording of rule 30:-

"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."

17. The Tribunal accepted the Respondent's reasons for lodging the application for recall after the fourteen day deadline had expired. The application had been served upon her by advertisement on the Tribunal's website. Whilst this is a permitted form of service under Rule 6A of the Rules, it was reasonable to assume that she would have been unaware of the case management discussion, and the order granted by the Tribunal, until such time as the charge for payment was served upon her. She had made contact with the Tribunal shortly after the charge was served, and subsequently submitted her application for recall after the Tribunal sought further information regarding her intentions. The Tribunal therefore concluded that there was good cause to extend the period under Rule 30(5) to allow the application for recall to be considered.

18. The Tribunal went on to consider whether it would be in the interests of justice to recall the order made in this case. It noted that the Respondent did not dispute the sum of £875 was due. With regard to the remaining sum sought by the Applicant, it was the Respondent's position that her tenancy deposit should have covered this. However, the Respondent had not sought to dispute the Applicant's claim for damages from the deposit. The deposit scheme had given her this opportunity but she had declined to participate in the scheme's adjudication process. Whilst the Tribunal accepted that she may not have wanted any further involvement with the Applicant at that time as a result of the allegations of stalking and aggressive behaviour, the Tribunal cannot now re-litigate matters that have been determined in another forum. The Tribunal therefore concluded that the Respondent's position regarding the deposit did not amount to an arguable defence to the claim.

19. On the basis that the Respondent does not appear to have any arguable defence, the Tribunal determined that it would not be in the interests of justice for the order to be recalled in this case. The Tribunal therefore refused the application for recall.

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.

Ruth O'Hare

Ruth O'Hare	**5 August 2025**
Legal Member/Chair	**Date**