

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of (i) an application for recall of an Order for Payment in terms of Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the Rules”) and (ii) review of a decision by the Tribunal in terms of Rule 39 of the Rules.

Chamber Ref: FTS/HPC/CV/18/2427

Re: Property at Seaview, 67 Main Street, Inverkip, Inverclyde, PA16 0AT (“the Property”)

Parties:

Ms.Tina Beales trading as Direct Homes, 0-1, 42 Anniesland Road, Glasgow, G13 1XB (“the Applicant”)

Mr Tomas Dilys, Seaview, 67 Main Street, Inverkip, Inverclyde, PA16 0AT (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the application for recall made by the Applicant and reviews its decision of 10 January 2019 and thereafter recalls the Order for Payment granted by it on 10 January 2019

Background

1. By application dated 20 September 2018 (“the Application”), the Applicant applied to the Tribunal for an Order requiring the Respondent to pay (i) rent amounting to £1,440.00 due by him in terms of a tenancy at the Property, (ii) £3,150.00 for a repair to the roof and chimney at the Property for damage caused by the Respondent, (iii) £150.00 for out of pocket expenses suffered by the Applicant due to the Respondent's actions and (iv) according to the Application “costs totally £3,440.00”.

2. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was held on 16 November 2018 at which CMD, the Applicant appeared. The Respondent did not appear. At the CMD, the Tribunal accepted the Applicant's claim in respect of rent due and owing to her by the Respondent, but, as no evidence was before it in respect of the other claims, ordered that a Hearing on evidence be fixed.

3. A Hearing was fixed for 10 January 2019 at which neither the Applicant nor the Respondent appeared and at which the Tribunal having accepted the Applicant's position that rent amounting to £1,440.00 is due to her by the Respondent at the date of the Hearing, made an Order in this respect. There being no evidence before it to find that the Respondent is due and

owing to the Applicant in respect of any other sums, the Tribunal made no Order in respect of the other sums claimed.

Application for Recall

4. By email dated 22 January 2019, the Applicant applied to the Tribunal in terms of Rule 30 of the Rules to recall the Order granted by it and explained that she had not been notified of the date of the Hearing and that had she been aware of the Hearing date, she would have attended and would have pursued the full sum sought in the Application. The Tribunal noted that the Chamber administration service had sent a copy of the Applicant's email to the Respondent.

5. The Tribunal had regard to the case paperwork and could not be satisfied that the Applicant had been properly notified of the date of the Hearing and so had no reason to disbelieve the Applicant in this respect.

6. The Tribunal had regard to the Rule 30 which states at Rule 30(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.". The Tribunal had no evidence before it that this essential part of the application for recall process had been complied with by the Applicant. Therefore, the Tribunal was unable to accept the application for recall.

Review of its own Decision.

7. The Tribunal then had regard to Rule 2 of the Rules which at Rule 2 (1) states "The overriding objective of the First-tier Tribunal is to deal with the proceedings justly." Having regard to the explanation provided by the Applicant, the Tribunal was of the view that it was appropriate that it should consider if the Applicant was prejudiced by her failure to comply with Rule 30(3) and found that she was so prejudiced as her full claim fell.

8. The Tribunal then had regard to its powers to review its own decision and to Rule 39 of the Rules which states "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.", and considered that if it were to review its decision and recall the Order of its own accord, would the Respondent be prejudiced? The Tribunal found that the Respondent would not be prejudiced as he an Order granted against him would be would recalled. Accordingly, the Tribunal reviewed its decision of 10 January 2019 and recalled the Order granted by it on 10 January 2019 of its own accord.

Karen Moore

Legal Member/Chair

15 February 2019

Date