



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/21/1454

Re: Property at 59 Bruce Road, Dundee, DD3 8LW (“the Property”)

Parties:

**Mrs Evelyn McMurchie, c/o Struan Baptie Property Management Ltd, 1A
Victoria Road, Dundee, DD1 1EZ (“the Applicant”)**

**Mr Zander Rourke, Ms Demi Murray, 59 Bruce Road, Dundee, DD3 8LW (“the
Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

BACKGROUND

1. On 31 August 2021 The Tribunal granted an Order for payment of rent arrears in favour of the Applicant against the Respondent. The amount ordered to be paid was £5,470.40;
2. The Respondents did not participate in the Case Management Discussion at which that Order was made. Subsequently, the Second Respondent, Ms Demi Murray, timeously lodged an application to recall the decision of the Tribunal. That application seeking a recall of the Order was presented by Dundee Law Centre on behalf of Miss Murray;
3. It was suggested that the decision should be recalled as there had been defects within the Property and that arrears of rent had arisen due to rent being withheld to compel the Applicant to effect repairs. It was also suggested that the First Respondent was no longer a tenant of the Property;

4. The Tribunal considered the application for recall and on 27th September 2021 issued a Decision assigning a Case Management Discussion to consider whether to recall the previous Decision. The Tribunal also issued a Direction requiring the Second Respondent to provide:-
 - a) a detailed explanation as to why she had failed to attend the Case Management Discussion at which the Order was originally made,
 - b) details of any outstanding repairs to the property and a copy of any correspondence between the parties in relation to the same;
 - c) copies of any correspondence between the parties advising that rent was being withheld due to defects in the property;
 - d) details of any bank deposits containing the withheld rental sums; and
 - e) details of any communication sent by the Second Respondent to the Applicant in relation to the First Respondent apparently having left the property previously;
5. Dundee Law Centre subsequently intimated their withdrawal from acting on behalf of the Second Respondent;
6. The Second Respondent did not provide any of the information requested by the Tribunal in the Direction issued to her;

THE CASE MANAGEMENT DISCUSSION

7. A Case Management Discussion was held on 12th November 2021 at 2pm by teleconference. The Applicant was represented by Miss M Coleman of Messrs Struan Baptie Property Management Limited, Dundee. The Second Respondent did not participate in the Case Management Discussion. The Tribunal, however, was satisfied that she was aware of the proceedings and, indeed, had previously been party to them and had instructed legal agents in relation to them. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 that the Second Respondent had received reasonable notice of the same and determined that it was appropriate to proceed in accordance with Rule 29 of the said Rules;
8. Miss Coleman invited the Tribunal to refuse the application to recall the previous Order for payment. The Tribunal did so;

REASONS FOR DECISION

9. Given that there was no appearance at the case management discussion by the Second Respondent, that it was her application seeking a recall which was being considered by the Tribunal, that the Second Applicant had failed to comply with any part of the Direction previously issued by the Tribunal and that the Tribunal had no information before it to conclude that there was any proper basis for the withholding of rent, the Tribunal had no reason to do anything other than refuse the application seeking a recall of the previous decision;
10. For the sake of completeness, the Applicant had provided information to the Tribunal which indicated that there had been some issues raised previously in relation to minor repairs being required at the property but also indicating that these were either attended to or, in other instances, unable to be attended to due to access to the property not being afforded by the Respondents;

DECISION

The Tribunal refuses the application to recall its decision dated 31st August 2021.

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.

Virgil Crawford

Legal Member/Chair

12 November 2021

Date