



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 30 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules 2017 (Rules)

Chamber Ref: FTS/HPC/CV/22/1384

Re: Property at 3 Vanguard Street, Clydebank, West Dunbartonshire, G81 2NB (“the Property”)

Parties:

McPhate Properties Limited, 64 Queen Victoria Drive, Glasgow, G14 9DJ (“the Applicant”)

Mr Darren Dolan, Ms Shannon Reid, Mrs Isabella Cameron Reid, 43 Kestrel Way, Perth, PH1 5FL; Unknown, Unknown; 43 Kestrel Way, Perth, PH1 5FL (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Chair and legal member) Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the recall request is refused.

Background

1. An application was received by the Housing and Property Chamber dated 11th May 2022. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments and damage to the Property.
2. On 23rd July 2022 all parties were written to with the date for the Case Management Discussion (“CMD”) of 26th August 2022 by teleconferencing. This was postponed due to unsuccessful service upon the Third Named Respondent. A new CMD date was set for 3rd November 2022 at 10am. Service

by Advertisement was undertaken upon all the Respondents from 23rd September 2022.

3. A CMD was held 3rd November 2022 at 10am by teleconferencing. The Applicant was represented by Mr Russell McPhate, solicitor, Morgans. The First Named Respondent, Mr Darren Dolan, was present and represented himself and the Second Named Respondent, Ms Shannon Reid. The Third Named Respondent, Mrs Isabella Cameron Reid, was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the hearing. Mr McPhate told the Tribunal that the Applicant was still seeking the Order as per the application. The Tribunal confirmed with Mr McPhate that he was seeking arrears of £3777.88 and £789 for the damage to the Property. The application details damage of £1264 but this is less the deposit of £475 which amounts in £789 outstanding. Mr McPhate confirmed that the deposit has been returned to the Applicant. In terms of the rent arrears he did not dispute the full amount. He said that his income had been reduced, they were paying back a Scottish Hardship Loan and were frustrated with the Applicant's letting agents' management of the Property. Mr Dolan accepted that there would be some rent arrears due but not all of it. Mr Dolan and Ms Reid had been furloughed from December 2020 to March 2021. Mr Dolan confirmed with the Tribunal that both he and Ms Reid had been paid their wages at 80% of the full value. The Tribunal had queried why the rent was not paid but Mr Dolan was not able to explain that in full. The Tribunal noted that this was a key part of any defence as to why he should not have to pay the full amount of the rent arrears. Mr Dolan told the Tribunal that he did not dispute that he owed the claimed amount for the changes to the lock (£100), removal and disposal of rubbish from the Property and garden (£120) and works undertaken to the garden (£160). He disputed the other items namely the Property clean (£204), damage to carpets (£500) and the marked walls that were beyond wear and tear (£180). The Tribunal asked Mr McPhate to clarify exactly where the deposit was allocated to as it was not clear if it was the disputed items or not. The Tribunal continued to a hearing for Mr Dolan to present evidence as to why the full amount sought was not due to the Applicant. The Tribunal set out questions that needed to be answered at the hearing and issued a direction for further evidence from both parties. The hearing date was set for 11th January 2023. The parties were clearly told that they must comply with the Direction. It was explained to the Mr Dolan that he needed to do this to show that he had a defence to not being required to pay all of the amount sought Respondent.
4. On 3rd January Mr Dolan sent in copies of text messages which largely related to other tenancy issues.
5. On 11th January 2023 at 9.37am Mr Dolan emailed the Housing and Property chamber advising that he had been up unwell through the night. He asked for a postponement. The Tribunal considered it in the interests of justice to allow a postponement on this occasion. On granting the postponement the Tribunal stipulated that any further postponements should be substantiated such as with a soul and conscious letter from a doctor.

6. On 17th February 2023 the Respondents were written to with the date for the hearing date of 22nd March 2023 at 10am by teleconferencing. The First Named Respondent was written to by Recorded Delivery post. This was signed for by the First Named Respondent on 18th February 2022. Service by Advertisement was undertaken upon the Second and Third Named Respondents from 17th February 2023.
7. On 13th March 2023, Mr McPhate lodged a response to the Direction insofar was relevant to the Applicant.
8. On 21st March 2023, Mr Dolan emailed the Housing and Property Chamber to say that he would not be attending due to illness but did not make a request to postpone.
9. A hearing was held 22nd March 2023 at 10am by teleconferencing. The Applicant was represented by Mr Russell McPhate, solicitor, Morgans. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the hearing or make a response to the direction issued. The Tribunal noted that in the email that Mr Dolan sent on 21st March 2023 he did not reference any further defence. The Tribunal had specifically told him that this would be necessary in advance of this hearing. The Tribunal considered it reasonable, on balance, to conclude that the Respondents did not have a defence to lodge. The Tribunal considered it appropriate to grant an order for payment.
10. On 23rd March 2023, Mr Dolan emailed the Housing and Property Chamber stating that he had received the decision on 22nd March 2023. He said that he was under the impression that he could not make a defence and that it would not be taken into consideration. He said had he known that he could have submitted further representations then he would have done so. He further stated that the letter he received was put through his letter box and not signed by anyone.

Reasons for Decision

11. An application for recall must be made by a party under Rule 30 of ***The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Regulations)***. Rule 30 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.

(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).

12. The Respondent applied for recall within 14 days as required by Rule 30(4).
13. The Respondent states that he would have made further submissions had he been aware that he could do so. The case first called at a CMD on 3rd November 2023 when Mr Dolan was present. It was clearly explained to him that he was required to submit a defence to his case. In addition, a direction was issued stating what exact information the Tribunal required. It was made very clear to Mr Dolan that this direction would need to be complied with. He did not comply with the direction. Mr Dolan emailed the Housing and Property Chamber approximately 25 minutes before the hearing that was due to start at 10am on 11th January 2023 to say that he was unwell. It was adjourned in the interests of justice. When he was written to by the Housing and Property Chamber, he was informed that any further adjournment request would need to be supported with evidence such as a doctor's note and a conscious letter. No letter or evidence was submitted regarding the illness that Mr Dolan had directly before the hearing on 22nd March 2023.
14. Secondly, Mr Dolan raised that a letter advising him of the hearing had been posted through his door without being required to be signed for by anyone. Clearly Mr Dolan did receive this notification. This does not merit being considered as an error.
15. The Respondent does not identify any point of law. The Respondent does not set out any defence to the application. The Respondent has failed to satisfy the Tribunal that it is in the interests of justice for the Tribunal to grant the application for recall.

Decision

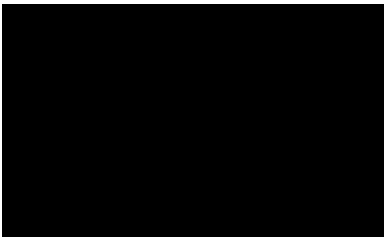
16. There has been neither an error in law nor an error in fact. It is not in the interests of justice to recall the case. Mr Dolan had been both told by the Tribunal of what was required of him in terms of the case and had received a CMD note and direction to indicate what action was required. He had received the notification letter. The Recall is refused.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.



Gabrielle Miller

24th April 2021

Legal Member/Chair

Date