



**Statement of Decision under Rule 30 of the First-tier Tribunal for Scotland
Housing and Property Chamber Rules of Procedure 2017 in relation to a
request for a Recall**

Chamber Ref: FTS/HPC/EV/22/3158

**Re: Property at 3 Easter Urray Cottage, Easter Urray Farm, Muir of Ord, IV6 7UL
("the Property")**

Parties:

**Messrs Simon Morrison & Co, Easter Urray Farm, Muir of Ord, IV6 7UL ("the
Applicant")**

**Mr Peter Manser, 3 Easter Urray Cottage, Easter Urray Farm, Muir of Ord, IV6
7UL ("the Respondent")**

Tribunal Members:

Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the minute for recall should be refused.**

Background

1. On 30th August 2022 the Applicant lodged an Application with the Tribunal under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 ("The Rules"), seeking an order to evict the Respondents from the property. The application was based on Grounds 8,11, 12,14 and 15 of Schedule 5 of the Housing (Scotland) Act 1988.
2. Lodged with the application were: -
 - a. Copy Terms of Let dated 29th April 1989
 - b. Copy Notice to Quit dated 14th April 2009;

- c. Copy AT6;
 - d. Section 11 Notice;
 - e. Copy correspondence with the Respondent and his solicitor
3. On 30th September 2022 the Tribunal wrote to the Applicant's solicitor raising some queries regarding the type of tenancy and the lack of a signed tenancy agreement. The Applicant's solicitor replied on 7th October 2022 stating that there was no formal tenancy agreement between the parties. He contended that the tenancy was an assured tenancy. The Notice to Quit was served in 2009 to end any contractual tenancy and put the position beyond doubt that the tenancy was a statutory one.
 4. The Application was served on the Respondent by Sheriff Officers on 30th November 2022.
 5. The Respondent emailed the Tribunal on 26th January 2023 seeking an adjournment. He said that he had spoken to the local authority, who were going to clear his arrears and make him a Discretionary Housing Payment. He needed time to sort it out. The Applicant objected to the adjournment on the basis that it was relying not only on rent arrears grounds for eviction but also two other grounds. The Tribunal refused the request for an adjournment.
 6. A Case Management Discussion ("CMD") took place by teleconference on 2 February 2023. The Applicant was represented by partner Mr Thomas Morrison, and solicitor Mr Cranston from Murchison Law. The Respondent represented himself.
 7. The Respondent said that he was opposed to the order being granted. His solicitor could not represent him at the CMD as she had left her employment and they did not yet have a new solicitor. He accepted the sum due by way of rent but did not agree with anything else that had been said.
 8. The Tribunal decided that as there was a dispute in relation to the facts the case would need to proceed to a hearing.
 9. The Hearing was scheduled for 20th April 2023 by teleconference. On the morning of the Hearing the Respondent telephoned the Tribunal's administration office and said that he would not be able to attend the Hearing due to a medical emergency and asked for an adjournment. He was asked to send an email to this effect.
 10. The Respondent dialled in to the Hearing before 10am and told the Clerk that he had sent an email as requested but could not remain on the line as he was having chest pains and needed to visit the doctor immediately. He hung up.
 11. The Hearing took place by teleconference. The Applicant was represented by partner Mr Thomas Morrison, and solicitor Mr Cranston from Murchison Law.

12. The Chairperson explained the circumstances and read out Rule 2 of the Tribunal's rules in relation to the overriding objective of the Tribunal. The Chairperson confirmed that the email sent by the Respondent had not yet filtered through the system. She said that proceedings would be adjourned until 10.30 to give Mr Cranston and Mr Morrison a chance to discuss the request for an adjournment, and for the Tribunal members to have a discussion with each other. Mr Morrison confirmed when asked that the respondent was a man in his sixties, and that partial rent was paid regularly by benefits.
13. The Tribunal reconvened at 10.30, by which time the Respondent's email had arrived. It was as follows:

ef no.FTS/HPC/EV/22/3158 I WILL NOT BE ABLE TO REPRESENT MYSELF AS I PLANNED. I HAVE A PAIN IN MY CHEST AND BREATHING PROBLEMS AND HAVE TO GO TO THE DOCTORS IMMEDIATELY I WOULD LIKE TO REQUEST A POSTPONEMENT ON HEALTH GROUNDS

PETER MANSER

14. Mr Cranston said that he had had sight of the email and had read it to his client. He was opposing the motion for an adjournment. He said that the Applicant was suspicious of the terms of the email given that the Respondent had previously asked for an adjournment on different grounds. He said that it was likely that the respondent was just trying to buy more time. He said that the arrears were increasing and that delay would have some prejudice to the Applicant.
15. The Tribunal, while having some sympathy with the Applicant's position, felt that having considered the overriding objective they had no alternative but to grant an adjournment.
16. In terms of Rule 2 (c) the Tribunal had to ensure so far as practicable that the parties were on an equal footing procedurally and were able to participate fully in proceedings. It would not be in the spirit of the Rule to proceed with the hearing in the circumstances.
17. In terms of Rule 2(e) the Tribunal should avoid delay. However in this case the Respondent had tenanted the property since 1989, there had purportedly been arrears for many years and some rent was being paid. The Tribunal took the view that on this occasion any prejudice to the Applicant by a delay was outweighed by the need to ensure that the Respondent could participate fully in the proceedings.
18. The Tribunal made it clear to the Respondent in the Written Decision that if he did not appear or was not represented at the adjourned hearing the balance would be likely to shift and the Hearing would be likely to take place in his absence.
19. The Tribunal issued a Direction to the Respondent for him to provide a letter from a doctor confirming that he had a medical emergency and was not able to attend the Hearing on 20th April 2023.

20. On 19th May 2023 the Respondent sent an email to the Tribunal as follows:

DEAR SIR, I WRITE WITH REFERENCE TO YOUR REQUEST FOR A MEDICAL CERTIFICATE. ON 20 APRIL I HAD A PAIN IN MY CHEST AND SHORTAGE OF BREATH. I WENT TO THE DOCTORS. THIS WAS A 40 MINUTE WALK , BY THE TIME I GOT THERE I FELT BETTER, THE PAIN IN MY CHEST HAD STOPPED. I SAT OUTSIDE THE DOCTORS FOR 15 MINUTES BUT DID NOT GO IN TO SEE THE DOCTOR AS I FELT ALRIGHT AND I DIDNT WANT THE DOCTOR TO SEND ME TO THE HOSPITAL FOR TESTS. I JUST WANTED TO GO HOME. I THINK I HAD SOME KIND OF PANIC ATTACK WHICH CAUSED THE PAIN IN MY CHEST ETC. IM SORRY FOR THE PROBLEMS I CAUSED THAT DAY, BUT I DID HAVE WHAT I THOUGHT WAS A MEDICAL EMERGENCY. BECAUSE I DIDNT SEE THE DOCTOR I DONT HAVE A DOCTORS CERTIFICATE. YOURS FAITHFULLY, PETER MANSER.

21. On the morning of the continued Hearing, at 8.53am, the Respondent sent an email to the Tribunal as follows:

**DEAR SIR, MY CASE IS DUE TO BE HEARD AT 10AM TODAY.
I WILL NOT BE ABLE TO ATTEND DUE TO ILL HEALTH.
I HAVE WHAT I SUSPECT IS FOOD POISONING, AND HAVE BEEN UP MOST OF THE NIGHT, I AM VERY UNWELL.
I WANTED TO DEFEND MYSELF AS I DONT HAVE A SOLICITOR.
I ALSO WANTED TO EXPLAIN THAT I WILL VERY SHORTLY BE ABLE TO PAY THE RENT ARREARS IN FULL.
IN THE INTEREST OF FAIRNESS I WOULD LIKE TO REQUEST A POSTPONEMENT ON THE GROUNDS OF ILL HEALTH.
I AM SORRY FOR ANY PROBLEMS CAUSED.**

PETER MANSER.

22. The Hearing took place by teleconference. The Applicant was represented by partner Mr Thomas Morrison, and solicitor Mr Cranston from Murchison Law.

23. The Chairperson explained the circumstances and read out the email received from the Respondent. Mr Cranston said that he was opposing the motion for an adjournment. He said that the circumstances were very similar to the last minute request for an adjournment just prior to the previous Hearing.

24. The Tribunal considered the overriding objective. The Respondent had sent an email seeking an adjournment for a medical emergency on the day of the previous Hearing. He had responded to the Direction by saying that he had not actually attended the doctor that day. He was warned in the Hearing Note that if he did not attend on this occasion the balance would shift.

25. Rule 2(e) does say that the Tribunal should avoid delay. The Tribunal proceedings were raised by the Applicant on 30th August 2022 and the Respondent had sought an adjournment on every occasion.

26. In all the circumstances, and considering that overriding objective, the Tribunal refused the Respondent's motion to adjourn.

27. After hearing evidence the Tribunal granted an order for eviction based on Grounds 8, 11, 12 and 14 of Schedule 5 of the Housing (Scotland) 1988.

28. On 9th July 2023 the Respondent sent an email to the Tribunal as follows:

DEAR SIR, I WOULD LIKE TO APPLY TO RECALL A DECISION.
MY CASE WAS HEARD ON 26 JUNE 2023. I WAS NOTIFIED OF THE OUTCOME ON 3 JULY.
I CONTACTED YOU ON 26 JUNE TO INFORM YOU I WAS UNABLE TO ATTEND BECAUSE I WAS ILL WITH FOOD POISONING.
I REQUESTED A POSTPONEMENT. I RECEIVED NO REPLY TO THIS REQUEST. I WAS NOT GIVEN THE OPPORTUNITY TO DEFEND MYSELF OR EXPLAIN HOW I AM NOW ABLE TO CLEAR THE RENT ARREARS IN FULL.
I FEEL THAT IN THE INTEREST OF JUSTICE AND FAIRNESS THAT I SHOULD APPLY TO RECALL THIS DECISION.
WITH THANKS,
PETER MANSER.

29. The email was copied to the Applicant, and their solicitor replied on 14th July 2023 with a very detailed letter outlining the reasons why the Applicant opposed the application for recall. Each point made in the letter was sound.

30. The application for recall is made under Rule 30, which is as follows:

(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.

31. The procedural requirements have been met, so the Tribunal must decide if it is in the interests of justice to grant the application for recall.
32. The procedural history has been outlined as above.
33. The Respondent sought adjournments on at least three occasions. Each request was made very close to, or on the date of, the calling. On each occasion the Tribunal considered the overriding objective before making a decision whether to grant them or not. It was made clear to the Respondent when the adjournment of the first hearing was granted that he would need to provide medical evidence to back up his reason. He did not do so. It was also made clear that if he sought a further adjournment the balance would be likely to change.
34. The Respondent made several promises of payment of the arrears, including in his application for recall, but payments have not materialised.
35. The eviction order was not solely granted in relation to non payment of rent, but also on Ground 14. The Respondent's email seeking recall does not address the finding on that ground.
36. The Tribunal considered that in the interests of justice the order should not be recalled.

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.

Alison Kelly

31 July 2023

Legal Member/Chair

Date