



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) concerning application at the request of the Respondent to review a Decision made by it dated 3rd May 2023, which application is made in terms of Rule 30 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Procedure Rules”)

Chamber Ref: FTS/HPC/EV/23/0497

Re: Property at 1/3 47 Springbank Gardens, Glasgow, G31 4QN (“the Property”)

Parties:

LARS HOUSING TRUST, F3 Buchan House, Enterprise Way, Dunfermline, Fife, KY1 8PL (“the Applicant”)

MR JOHN MCCRATE, 1/3 47 Springbank Gardens, Glasgow, G31 4QN (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

Background

This was an application for an eviction order dated 15th February 2023 and brought in terms of Rule 109 (Application for an eviction order) of the Procedure Rules.

The Applicant sought an eviction order in relation to the Property against the Respondent, and provided with its application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof of service, rent increase notice, rent arrears statement, and various pre-action correspondence.

All of these documents and forms excepting possibly the notice to leave had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Cost*

of Living (Tenant Protection) (Scotland) Act 2022, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 28th March 2023, and the Tribunal was provided with the execution of service.

A Case Management Discussion was held at 14:00 on 3rd May 2023 by Tele-Conference. The Applicant did not participate, but was represented by Miss Donnelly, solicitor. The Respondent did not participate, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of the Procedure Rules.

Miss Donnelly confirmed that rent arrears at the time the notice to leave was served were £3,583.50, and as of the date hereof date were £6,350.50. Miss Donnelly invited the Tribunal with reference to the application and papers to grant the order sought on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Miss Donnelly, under reference to the pre-action correspondence, advised the Tribunal of various attempts to contact the Respondent asking him to make contact with the Applicant in order to discuss options to assist him with his rent arrears, and advising him about where he might obtain advice.

The notice to leave relied on ground 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £553.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement, which rental was increased to £569.50 per month with effect from 1st May 2022. The Respondent had been in substantial rent arrears as at the date of the notice to leave, and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to him.

The Tribunal issued its Decision and Statement of Reasons granting the order sought on 3rd May 2023, which was sent to the Respondent by post on 9th May 2023.

Application for Recall at the Request of the Respondent

By e-mail dated 17th May 2023, the Respondent applied to the Tribunal for recall of its Decision of 3rd May 2023.

The Respondent stated that his grounds for seeking recall were that he was not represented or present at the Case Management Discussion as he was told via e-mail by his housing manager that it was being held on 5th May 2023 at 2pm which led him to believe that the date had changed.

Further, the Respondent stated that he had sent in a time to pay letter explaining his reasoning for falling behind with his rent payments. He had started to turn his life around after suffering mental health and relationship issues. He sought to have the eviction order overturned.

The Applicant opposed the application for recall by e-mail from its representative to the Tribunal dated 24th May 2023. The Applicant's representative provided with that e-mail copy e-mail correspondence between the Applicant and the Respondent. In the Respondent's e-mail of 19th April 2023, he states "I am aware that we have a hearing on 3rd May 2023". The Tribunal papers served on the Respondent clearly identified the date of the Case Management Discussion, which was also identified in the Applicant's representative's application to amend the application of 14th April 2023 which was intimated to the Respondent.

Finally, the Respondent had made no payments in respect of rent since November 2022, and arrears of rent remained as at 24th May 2023 at £6,350.50. Various repayment arrangements had been agreed in the past, none of which the Respondent adhered to.

Reasons for Decision

Rule 30(4) of the Procedure Rules provides that an application for recall must be made by a party and received by the Tribunal within 14 days of the decision. The application was accordingly timeous.

The Tribunal noted that the Respondent had been validly served by sheriff officers with the notification regarding the Case Management Discussion of 3rd May 2023, together with copies of the application, papers and guidance notes from the Tribunal on 28th March 2023.

As of 19th April 2023, the Respondent clearly knew that the Case Management Discussion was set for 3rd May 2023, as evidenced in his e-mail to the Applicant on that day. The Applicant's representative also advised him of the correct date in the Applicant's application to amend of 14th April 2023 which was intimated to the Respondent.

These documents all refute the Respondent's assertion that he was in error about the date of the Case Management Discussion, which date was clearly intimated to him and which date he confirmed he was aware of in his e-mail to the Applicant. The Tribunal noted that it has not received any time to pay letter explaining the Respondent's reasoning for falling behind with his rent payments

The Tribunal did not consider the Respondent's explanation for his failure to take part in the proceedings and his failure to participate at the Case Management Discussion to be satisfactory in those circumstances.

For those reasons, the Tribunal did not consider that it would be in the interests of justice for the decision to be recalled in terms of Rule 30(2) of the Procedure Rules, and refused the application for recall in terms of Rule 30(9) of the Procedure Rules.

Decision

For the foregoing reason the Tribunal refused the application.

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.

N. Kinnear

8th June 2023

Legal Member/Chair

Date