

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Rule 30 of the First-tier Tribunal
Housing and Property Chamber (Procedure) Rules 2017 (as amended)**

Chamber Ref: FTS/HPC/CV/23/0061

Re: Property at 17 Durness Avenue, Bearsden, Glasgow, G61 2AH (“the Property”)

Parties:

**Sadco Properties Limited, 2 Methven Avenue, Bearsden, Glasgow, G61 2AX
 (“the Applicant”)**

**Mr Bradley McKay, 13 Burnmouth Place, Bearsden, Glasgow, G61 3PG (“the
 First Respondent”)**

**Mrs Gillian McKay, 13 Burnmouth Place, Bearsden, Glasgow, G61 3PG (“the
 Second Respondent”)**

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined not to recall its decision of 22nd May 2023.**

Background

1. By application received on 9th January 2023, the Applicant applied for an order for payment in the sum of £7,200 in respect of unpaid rent.
2. A Case Management Discussion (“CMD”) was set down for 5th April 2023. By emails dated 20th and 24th March 2023, the Respondent, Mr McKay, requested that the CMD be postponed to late May 2023 for health reasons. A medical letter was provided. The Tribunal agreed to grant the application for postponement on cause shown.
3. A CMD took place by telephone conference on 22nd May 2023. The Applicant was not in attendance, and was represented. The Respondents were not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was

appropriate to proceed with the application in the absence of the Respondents. Following representations, the Tribunal granted an order for payment in favour of the Applicant in the sum of £7,200. A written decision was issued to parties dated 22nd May 2023.

4. By email dated 1st June 2023, the First Respondent requested a recall of the decision stating that he had been unable to attend the CMD due to a deterioration in his medical condition, and that he had not opened the notification letter and was unaware of the CMD.
5. By email dated 9th June 2023, the Applicant's representative lodged a statement of objection to the application for recall, stating that it was not in the interests of justice for the order for payment to be recalled.
6. The Tribunal issued a Direction dated 13th June 2023 to both Respondents, seeking individual clarification from both of the reasons for failure to attend, and the basis of their defence to the action.
7. By email dated 24th June 2023, the First Respondent issued a response to the Direction, giving further information regarding his medical condition and stating that tracking emails and letters was not his priority. He stated that his defence was that the Applicant misled the Respondents and had this not happened, he would have had an opportunity to rectify the outstanding balance and not been made homeless.
8. The Tribunal ordered parties to appear at a CMD in order to hear parties on whether it would be in the interests of justice for the decision to be recalled. The Tribunal issued a Direction to the Respondents to lodge a comprehensive note of defence prior to the CMD.
9. By email dated 13th July 2023, the Respondents lodged a written note of defence.

Case Management Discussion

10. A CMD took place by telephone conference on 19th July 2023. The Applicant was not in attendance and was represented by Mr Augustine Casiday, Solicitor. Both Respondents initially dialled in to the conference. The Second Respondent informed the Tribunal Clerk that she wished the First Respondent to represent her, and she left the line.
11. The First Respondent referred to the Respondents' written note of defence and set out the salient points. It was his position that the order for payment ought to be recalled in the interests of justice. He explained that the Respondents had struggled to meet their rental payments through the Covid-19 pandemic. The Applicant had failed to follow Scottish Government guidelines and had not offered payment holidays to the Respondents. There had been constant demands for rent, and the Applicant had used threatening tactics. The Applicant did not ask the Respondents for their payment proposals. He told them the bank was going to take legal action against them.

12. The First Respondent said the Applicant had used eviction as a threat to try and get payment from the Respondents. A Notice to Leave had been served. The ground of eviction was that a family member was moving into the Property. The person that moved in was clearly of different cultural origin to the Applicant and was not a family member. The Respondents asked for evidence that the new occupant was a family member, but this was not provided. The Respondents asked the Applicant if they could set up a payment agreement, but he responded by getting a debt collector involved.
13. The First Respondent said he has never disputed that the money is outstanding. It was the Respondents' position that the Applicant had failed to adhere to Scottish Government guidelines, and had behaved in an unethical manner. The Applicant had responsibilities as a landlord, and a duty of care to the Respondents, and he had failed to comply with these. He should not be paid the full outstanding rent. Responding to questions from the Tribunal as to whether there was any legal basis for this argument, the First Respondent said he was not aware of any legal basis. The First Respondent said his intent had been to try and address the arrears last June. He had asked for evidence from the Applicant in relation to the reason for eviction and the new occupant, but he had not been given this.
14. Mr Casiday referred to the note of opposition submitted on behalf of the Applicant. It was his position that there was no stateable defence put forward by the Respondents. The arrears had accrued, and the figure was not disputed. The Tribunal had a narrow and specific focus, and this was not the forum for pursuing the issues raised by the Respondents. If the Tribunal did not recall the order for payment, this would not prejudice the Respondents, or prevent them from seeking any other remedy in respect of their complaints.

Reason for decision

15. The Tribunal considered the written and oral submissions on behalf of both parties. The Tribunal considered that the defence put forward by the Respondents was not a stateable defence. By the admission of the First Respondent, the arrears which were the subject of the decision of 22nd May 2023 are lawfully due and outstanding. The Applicant is entitled to payment of the outstanding rent. Even if the Respondents succeeded in proving the Applicant's behaviour at an evidential hearing, it would not affect whether or not the arrears were lawfully due and outstanding. Given that there is no stateable defence, it would not be in the interests of justice to recall the decision of 22nd May 2023.
16. The Tribunal makes the observation that this decision does not prevent the Respondents from taking action against the Applicant in respect of the alleged wrongful termination of their tenancy. They may wish to consider taking advice in respect of that matter, and whether they have any other recourse against the Applicant for perceived failures of his obligations.

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.

H Forbes

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Legal Member/Chair

—— 19th July 2023
Date