

Housing and Property Chamber

First-tier Tribunal for Scotland



Regulation 30 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Reference number: FTS/HPC/CV/20/2585

Property at 1/29 Heron Place, Edinburgh, EH5 1GG (“the Property”)

Parties:

Dr Sarah Turner and Mr Mark Waugh, Riverside Cottage, Isle of Harris, HS3 3JQ (“the Applicant”)

Ms Louise Hanscombe, 1/29 Heron Place, Edinburgh, EH5 1GG (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)
Ann Moore (Ordinary Member)

Decision

The Respondent’s Application for recall is refused because

- (i) The application is late and the time for applying for recall cannot be extended because the respondent fails to show cause for extending the time for applying for recall of the tribunal’s decision, and
- (ii) It is not in the interests of justice to recall the tribunal’s decision dated 7 May 2021.

Reasons for decision

1. By email dated 25 May 2021 the respondent applies to recall the decision of the First-tier Tribunal for Scotland, Housing and Property Chamber, dated 7 May 2021, relying on Regulation 30 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The respondent says that she was unable to participate in the case management discussion hearing held at 10am on 7 May 2021 because she was unwell.

3. The applicant was invited to comment on the application for recall and opposes the application for recall.

4. On 3 June 2021 the tribunal fixed a case management discussion in terms of Rule 30(9)(c) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 so that the application for recall could be properly considered. The respondent was given notice that she would be asked to provide

(i) A reason for applying for recall late.

(ii) Evidence of the steps she has taken to secure advice and representation following her email of 30 April 2021 asking for a continuation of the hearing fixed for 7 May 2021

(iii) Medical evidence of the nature and extent of the symptoms of the illness which prevented her from participating in the hearing on 7 May 2021

(iv) A written statement in advance of the forthcoming case management discussion of her opposition to the applicant's application for payment.

5. On 7 June 2021 the First-tier Tribunal for Scotland (Housing and Property Chamber) wrote to both parties notifying them of the time date and place of this case management discussion.

6. Nothing has been received from the respondent since she intimated her application to recall the decision dated 7 May 2021.

7. A case Management Discussion took place on 14 July 2021 at 10am by video conference. The applicants were represented by Ms B Cartwright. The respondent was neither present nor represented. The hearing was delayed until 10.10am to enable the respondent to participate, but the respondent did not join the video conference.

8. The application for recall has been received late. The application must be made within 14 days of the date of decision. No explanation is given for the delay in making the application. No request is made to extend time in accordance with regulation 30(5) of the 2017 procedure rules. The tribunal can only extend the time for making an application for recall on cause shown.

9. The respondent fails to explain why the application for recall is late. No cause is shown. The tribunal cannot extend the time for making the application for recall. The application cannot succeed because it is late and no reason has been given for making the application more than 14 days after the decision of 7 May 2021 was intimated to the respondent.

10. For an application for recall to succeed, the respondent would have to establish that it is in the interests of justice to recall the decision dated 7 May 2021. The respondent provides no reliable evidence that the interests of justice would be served by recalling the decision dated 7 May 2021. The respondent was given fair notice of the evidence required to support the application to recall (by the tribunal's decision dated 3 June 2021) but has

chosen not to provide any evidence and has chosen not to participate in this hearing.

11. The reasons given by the respondent to seek recall of the tribunal's decision dated 7 May 2021 are inadequate and unsupported. In the decision dated 3 June 2021 the respondent was told what evidence is required to support her application for recall, yet the respondent produces no supporting evidence. The respondent was given adequate notice of the time, date and method of this Case Management Discussion hearing, but did not attend and has made no contact with the tribunal.

12. It is not in the interests of justice to recall this tribunal's decision dated 7 May 2021. The application for recall of this tribunal's decision dated 7 May 2021 is refused.

Decision

The Respondent's Application for recall is refused because

- (i) The application is late and the time for applying for recall cannot be extended because the respondent fails to show cause for extending the time for applying for recall of the tribunal's decision, and
- (ii) It is not in the interests of justice to recall the tribunal's decision dated 7 May 2021.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the First-tier Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Permission to appeal must be sought by application to the Upper Tribunal within 30 days of the date this decision is sent to the parties.

Paul Doyle

Signed
Legal Member

14 July 2021