

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/EV/18/0346**

**Re: Property at 6 Larchgrove Road, Glasgow, G32 0AA (“the Property”)**

**Parties:**

**Mr Dale Bahadur, c/o Smart Move Estate Agents (Scotland) Ltd, 94 Duke Street, Glasgow, G4 0UW (“the Applicant”)**

**Mr Krystian Sachmerda, 6 Larchgrove Road, Glasgow, G32 0AA (“the Respondent”)**

**Tribunal Member:**

**Nicola Irvine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application to recall the decision of 19<sup>th</sup> June 2018.**

**Background**

A case management discussion took place on 19<sup>th</sup> June 2018. The Applicant was represented by Mr Reynolds and the Respondent was absent. Reference is made to the decision of 19<sup>th</sup> June.

On 16<sup>th</sup> August 2018, the Tribunal received a letter from the Respondent’s solicitor seeking recall of the decision. The Respondent sought to extend the time limit for the application to recall the decision. Reasons were given for the late application. The Tribunal assigned a case management discussion for 2<sup>nd</sup> October 2018 in respect of the application to recall the decision.

## The Case Management Discussion

The Applicant was represented by Mr George Reynolds of Smart Move Estate Agents (Scotland) Ltd. The Respondent was represented by Miss Nelson, solicitor. Although the Respondent was expected by his solicitor to attend, he did not, and the case management discussion proceeded in his absence. Mr Reynolds advised that the application to recall the decision was opposed. The Tribunal identified that a preliminary matter had to be determined namely, has the Respondent shown cause to extend the period of time allowed in Rule 30(4)? If the Tribunal is satisfied that cause is shown, then the substantive matters raised in the application to recall fall to be dealt with.

The letter from Miss Nelson dated 16<sup>th</sup> August 2018 sets out the Respondent's position. Miss Nelson clarified the Respondent's reason for making the application outwith the 14 day time period provided for in Rule 30(4). She explained that when she first met with the Respondent, he made mention of a back injury but that injury is not advanced as a reason for the later application. The reason given is that there is a language barrier and although the Respondent noted dates on paperwork that he received, he did not understand that he should attend the case management discussion, nor did he understand the consequences of failing to attend. Miss Nelson went on to explain that the Respondent received the notice of ejection on 3<sup>rd</sup> August 2018 although he apparently did not understand the import. He spoke to his girlfriend who subsequently sought advice from the Citizens Advice Bureau on 13<sup>th</sup> August. The Respondent's girlfriend then consulted Miss Nelson and thereafter, Miss Nelson met with the Respondent on 16<sup>th</sup> August, took instructions, and made the application to recall the decision.

Mr Reynolds advised that the Respondent is a private hire taxi driver and has had to undertake customer care courses to enable him to do that work. He is also apparently employed as a part time delivery driver for DHL. Mr Reynolds explained that the Respondent's mother was previously the tenant in this property and that the Respondent has been resident in the property since 2010, although he only became the tenant in 2012. He advised that he considers the Respondent's grasp of the English language is excellent. Mr Reynolds further advised that, following service of the notice to quit and section 33 notice (both of which were served on 12<sup>th</sup> April 2017), the Respondent attended at his office. Mr Reynolds apparently suggested to the Respondent that he should take legal advice. Mr Reynolds advised that this suggestion was dismissed by the Respondent who told him that there was no need for legal advice because he intended to pay the rent arrears. Mr Reynolds advised that following intimation of the application to the First-tier Tribunal, the Respondent attended at his office once again. Mr Reynolds' position is that he explained that an order for eviction would be sought and that the Respondent should take legal advice. Mr Reynolds' position is that the Respondent can speak and read English very well. The Tribunal was invited to refuse the application to extend the time limit for making the application to recall the decision. Mr Reynolds advised that the Respondent had

4 opportunities throughout this process to seek legal advice and he did so only at the last possible stage before being evicted. The 4 opportunities referred to by Mr Reynolds were upon receipt of:-

1. The Notice to Quit and the Section 33 notice
2. The application to the First-tier Tribunal
3. The decision of the First-tier Tribunal of 19<sup>th</sup> June 2018.
4. The notice of ejection from sheriff officers.

The Applicant's position is that the steps taken by the Respondent have been to thwart the Applicant's ability to regain possession.

### **Reason for Decision**

The Tribunal proceeded on the basis of the submissions made by both representatives. The Tribunal had regard to the information contained within the letter of 16<sup>th</sup> August 2018 and the information given by Mr Reynolds at today's case management discussion. That information was not contradicted. The terms of Rule 30(4) are mandatory. Although finely balanced, the Tribunal was not satisfied that cause was shown to extend the period of time for lodging an application to recall the decision, as provided for in Rule 30(4). In these circumstances, the Tribunal did not consider the substantive matters raised in the application to recall.

### **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.**

**Nicola Irvine**

Legal Member/Chair

2<sup>nd</sup> October 2018

Date