



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 30 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules 2017 (the Procedural Rules)**

**Chamber Ref: FTS/HPC/PR/20/1997**

**Re: Property at 3 Queens Terrace, St Andrews, Fife, KY16 9QF (“the Property”)**

**Parties:**

**Mr Matthew Payne, Tudor House, Underriver, Sevenoaks, Kent, TN15 0SL (“the Applicant”)**

**Ms Jane Rose, 9 Viewmount Road, Wormit, Newport On Tay, DD6 8NJ (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was not appropriate to grant the Application for recall of the decision.**

**Background:**

The application for a payment order under Rule 103 of the Procedural Rules was made on 16 September 2020.

On 3 December 2020 the Applicant was written to with the details of the Case Management Discussion (CMD) which was to be held on 7 January 2021 at 14:00 hours. The Applicant was provided with the dial in details. The Direction and the Notification of the CMD were sent by the Tribunal to the same email address, which had been provided by the Applicant. The documentation included the following information: *"If you wish to request a postponement of the case management discussion, you will have to show a good reason why such postponement is necessary."*

The Applicant had previously been asked for specific information in a direction of 24 November 2020 which was due to be lodged on 15 December 2020. He then asked for further time to lodge the evidence.

On 15 and 16 December 2020 the Applicant provided a copy of an email from SafeDeposits Scotland of 4 August 2020 advising him that the deposit may have been lodged late by the Respondent. He also provided a document showing various payments of £490 on various dates, which he referred to as a bank statement.

The Tribunal checked the information provided and no details of the bank account or other transactions were shown on this document and it was not clear from the document which of the entries, if any, constituted the payment of the deposit as the Applicant had stated in the covering email that "the reason the amount is double is that it also included the first month's rent in the payment", however, no amount other than £490 was listed in the payments shown in the email.

On 22 December 2020 the Respondent lodged pages from two different tenancy agreements, both with the Applicant as joint tenant with 3 other individuals, which commenced respectively on 1 September 2019 and 1 February 2020. The Respondent stated that the tenancy of 1 September 2019 had ended by notice having been given by all joint tenants. A new tenancy, which three of the previous tenants and a new tenant replacing the fourth joint tenant had been entered into started on 1 February 2020. This second tenancy ended on 30 June 2020.

### **The Case Management Discussion:**

The Respondent attended the CMD. The Applicant did not participate. There had been no further correspondence from him since 16 December 2020. No application for a postponement had been made.

On 7 January 2021 the Tribunal resolved to dismiss the application in terms of Rule 27 (2) (b) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended). The decision was issued to the parties by the Tribunal on 11 January 2021.

### **Application for Recall:**

By email of 12 January 2021 the Applicant asked for a recall of the decision with the following reasons:

"I received the initial CMD in the middle of one of my final university exams (I have attached evidence as to the deadline to evidence that this was the case) and so did not give it as much focus as it merited, the next exam was a few days later, which also affected my focus, since then, I finished university and had the subsequent task of searching for post-study employment, then finally prior to the full lockdown I drove my partner to her essential work as a teacher in Barnsley, not predicting the full lockdown that was called days later and I have subsequently been separated from my journal which I left at home, which meant that any physical record of the appointment."

On 18 January 2021 the Applicant sent a further email. In this he stated under point 1) that the Tribunal made various incorrect statements in the decision. He stated that

the reference to "Various payments of £90" was incorrect as these had been payments of £490 each.

He then stated under point 2) that it is not correct that there was no evidence of a double payment because one of the documents he lodged referred to a payment of £994 to the Respondent. He stated he had sent an email with a screenshot of the statement "*which clearly showed a payment again made out to the Respondent's name (Jane Rose), but this time for £994.*"

Finally under point 3) he stated that he had submitted the account information in that second screenshot.

On 23 January 2021 the Tribunal wrote to the Applicant stating "Please provide evidence that in terms of Rule 30 (3) the application has been sent to the respondent at the same time you sent it to the Tribunal. Unless this was the case the application is not valid."

By 3 February 2021 reply had been received by the Tribunal to that request.

On 29 January 2021 the Tribunal issued new version of the decision of 7 January 2021, which was corrected in terms of Rule 36 of the Procedural Rules. This the typographical error of £90" on page 2 paragraph 3 line 4 to "£490".

## **The Tribunal Reasons for Decision**

### ***Recall***

30.—(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.

The Tribunal carefully considered the application for recall by the Applicant. All documents forming part of the original case and the correspondence between the Tribunal and both parties regarding the recall request are referred to for their terms and held to be incorporated herein.

When the Tribunal wrote to the Applicant on 23 January 2021 the Tribunal set out clearly the requirement of Rule 30 (3) of the Procedural Rules to the Applicant and offered him the opportunity to verify that the application had been made in accordance to the requirements of said rule.

The Applicant did not reply. The Tribunal is not satisfied that the applicant that a copy of the application has been sent to the Respondent at the same time as the application was made.

This is the first ground on which the application is refused.

Even if the Tribunal had the option of allowing the application to progress at this stage, the Tribunal does not consider that the Applicant has provided reasons the Tribunal considered sufficient for it to be in the interests of justice to allow a recall of the decision. There is a contradicting interest of finality of a decision made.

The recall provision is not a mechanism which would allow a party to ignore a calling of a case and then, if the outcome does not suit them, to ask for the matter to be re-opened. The Applicant was clearly aware of the date of the Case Management Discussion (CMD). He stated that he was somewhat distracted by his final exams and by his subsequent efforts to find employment and had not given the matter "as much focus as it merited". However, the deadline of the essay he referred to in his application, which was evidenced by an email from the university, was 8 December 2020. This was a full month before the date of the CMD. The Tribunal's letters intimating the date of a CMD expressly gives the option of applying for a change of date if that is not suitable. No such request had been made. If the Applicant wishes

to pursue a legal process against another party it is up to him to ensure that the process can actually progress. The Applicant clearly had given the matter some thought after his exams and in fact provided further evidence after the date of 8 December 2020 on 15, 16 and 22 December 2020. He obviously at that stage was aware of the process and not distracted by his exams or his efforts to obtain work. The Applicant claims he then left his journal behind when he drove to Barnsley, but as he clearly knew the CMD would be soon, he could have simply telephoned the Tribunal if he was unsure when the date was. The Tribunal does not consider that the reasons provided, even him leaving his journal behind, are a good enough reason to find that a recall would be appropriate in this case. This was the Applicant's application. If he wished to insist on it he had to make sure he reacted appropriately to the Tribunal's correspondence and was prepared to participate when the case called. The Tribunal did not consider that the further documents lodged by the Applicant on 18 January 2021 change the position. The Tribunal made the decision on the basis of all the evidence lodged by the date of the CMD. The screenshots the Applicant referred to in his email of 18 January 2021 were not part of the original case evidence and were not part of the bundle considered by the Tribunal. The Applicant does not state when he claims these were first sent. They were not received by the Tribunal until 18 January 2021 and thus first introduction on that date. These documents are not documents which only became available after the date of the CMD. They could have been lodged prior to the CMD. They were not available to the Tribunal at the CMD. The Tribunal considers that they now cannot be introduced at this stage. In any event, they would not materially affect the main issue of the case, which was the issue of the duration of the relevant tenancy agreement.

## **Decision**

**The Tribunal refuses the application for recall of the decision of 7 January 2021 in terms of Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended).**

## **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.**

**Petra Hennig McFatridge**

**Petra Hennig McFatridge  
Legal Member/Chair**

**3 February 2021  
Date**