

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision 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/PR/19/0057

Re: Property at 1 Parliament Street, Edinburgh, EH6 6EB (“the Property”)

Parties:

Mrs Diana Karlins, Flat 11, 24B Allanfield, Edinburgh, EH7 5FT (“the Applicant”)

Mr Tarjinder Hundal, 30 Corbiehill Road, Edinburgh, EH4 5DZ (“the Respondent”)

Tribunal Member:

Maurice O’Carroll (Legal Member and Chair)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the request for recall in terms of rule 30 of the Tribunal Rules would be refused because it is out of time.

Background

1. A Case Management Discussion (“CMD”) was held on 13 June 2019 to hear the above application. A note of that CMD was produced which is incorporated here and not repeated.
2. Following the CMD, the Tribunal issued an award to the Applicant in the sum of £2,085, being three times the deposit that was not placed within a deposit scheme as required by the 2011 Regulations.
3. The Respondent now seeks a recall of that decision. The recall provisions apply in cases where a decision was made in the absence of a party because they did not take part in the proceedings or were otherwise absent or not represented. This was such a case.

4. The Respondent states that he was unaware of proceedings and only found out that there was an Order for payment against him as a result of a chance internet search. He seeks recall on that basis and suggests a further CMD.

Decision and reasons

5. The request for recall is refused. In terms of rule 30(4), the application must be made within 14 days of the decision. The decision was made on 13 June 2019. The deadline was therefore 27 June 2019. The request for recall was made on 8 July 2019 and is therefore out of time.
6. In terms of rule 30(5), the Tribunal may extend the time period set out in the prior paragraph of the rule on cause shown. No cause has been shown other than the fact that the Respondent was unaware of the proceedings. As noted in paragraph 15 of the original decision, the Respondent has not engaged with the Tribunal process in any way.
7. Further, at the CMD the Applicant stated that she had been in touch by telephone with the Respondent. She was not able to serve him by post in relation to the proceedings because he did not divulge his address. It was for that reason that Service by Advertisement was carried out conform to Certificate dated 13 June 2018.
8. In response to recall request, the Applicant has further confirmed that she discussed the application with the Respondent by telephone at the end of March or in early April. The Tribunal is therefore of the view that the Respondent was in fact aware of the proceedings but chose not to engage with them.
9. In these circumstances the Tribunal is not minded to exercise its discretion to extend the deadline for submission of the recall request.
10. It is also mindful of the fact that as part of the recall request, the Respondent accepts that he did not place the Applicant's deposit within an approved Deposit Scheme.
11. No mitigating circumstances have been stated, except that he was unaware of the requirement to do so. The deposit regulations have been in existence for over eight years. It is incumbent on landlords such as the Respondent to make themselves aware of legislation which affects them and their tenants. Ignorance is accordingly no excuse and does not constitute mitigating circumstances.
12. Given that, the Tribunal would in any event be minded to issue the same penalty in respect of the admitted failure to comply with the 2011 Regulations which is to apply a three-fold multiplier penalty as it did on 13 June 2019. Accordingly, any further procedure would serve no purpose.

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.

16 July 2019

Legal Member/Chair

Date