



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/PR/22/1218**

**Re: Property at 2/1 65 Causeyside Street, Paisley, PA1 1YT (“the Property”)**

**Parties:**

**Luke Humberstone, 3/1 45 Seedhill Road, Paisley, PA1 1SD (“the Applicant”)**

**Amarjit Kaur Kambo, 194 - 204 Main Street, Wishaw, ML2 7NB (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

**In terms of Rule 30(9) of the Regulations, the Tribunal having considered an application for recall of the Order for wrongful termination granted on 12 September 2022, refuses the application for recall.**

1. This is an application submitted to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) on 28 April 2022 for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The Tribunal originally assigned an earlier Case Management Discussion (“CMD”) under Rule 17 of the Regulations. Sheriff Officers were unable to serve the application on the Respondent. The CMD was accordingly discharged. A new CMD was assigned for 12 September 2022. The Application was served on the Respondent by Sheriff Officers at the Respondent’s business address of 194 - 204 Main Street, Wishaw, who after diligent enquiries, left it in the hands of an employee. An Execution of Service dated 26 July 2022 was received by the Tribunal.

3. The Tribunal proceeded with a CMD on 12 September 2022 by way of teleconference. The Applicant appeared on his own behalf. There was no appearance by or on behalf of the Respondent despite the teleconference starting 17 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice the CMD was proceeding on 12 September 2022 having been served the application on 26 July 2022.
4. The Tribunal heard full and detailed submissions from the Applicant. The Tribunal fully considered the Private Rented Tenancy Agreement between the parties dated 4 May 2019, the Notice to Leave dated 10 November 2021 specifying that the Respondent intended to sell the Property by reliance on Schedule 3, paragraph 1 of the Private Housing (Tenancies) (Scotland) Act 2016 Act, a copy advert from Your Move for the Property, emails between the Applicant and G4 Properties dated 22 March 2022, an excerpt from Landlord Registration and photographs of the Property. The Tribunal also had a copy of title number REN37047 for the Property which showed the Respondent was still the heritable proprietor.
5. The Tribunal made a number of Findings in Fact including that a Notice to Leave had been served on 10 November 2021, that the Respondent remains the heritable proprietor of the Property under Title Number REN37047, that the Property was advertised for let shortly after the Applicant left at a higher rent, that the Respondent is still registered as a Landlord of the Property and that G4 Properties are the Letting Agents. The Tribunal found that the Respondent had wrongfully terminated the tenancy and made a wrongful termination order. A copy of the decision of 13 September 2022 was sent to parties on 14 September 2022 (“the decision”). The Respondent was sent the copy decision to the same address at 194 - 204 Main Street, Wishaw as the application intimated by Sheriff Officers on 26 July 2022.
6. On 27 September 2022 an application for recall was received by the Tribunal from 1st Lets (Glasgow) Limited. The recall stated that the Landlord was Mrs and not Mr Kambo and that the wrong personal pronoun had been used in the decision. The Tribunal has corrected the decision of 13 September 2022 accordingly under Rule 36 of the Regulations.
7. Further the recall stated that-

*“The Landlord was not available at the time of the Hearing, the Landlord was also unaware of any CMD hearings arranged”.*

The recall further went onto state –

*“The Landlords name and current communication address being the current Management Agent is correct and available via Landlord Registration, and if the Notifications had been sent (or a copy sent) to the current Managing Agent, then they would have been able to either avail themselves to the*

*Tribunal CMD, or, advise the Tribunal of the correct pronoun and also the whereabouts of the Landlord, as they were out of the UK at the time of the Notifications being sent.*

*The serving of the Notifications of the CMD were sent to an incorrect address with an incorrectly named person, they were also then handed to an unnamed 'employee' of the Landlord and no communication was sent to the Landlords Managing Agent of any of the Case Management Discussions (sic)."*

8. On 4 October 2022 the Tribunal acknowledged receipt of the recall. On 12 October 2022 the Tribunal requested that 1st Lets (Glasgow) Limited forward a mandate from the Respondent authorising them to act in the application to recall. No mandate has been received by the Tribunal.
9. A copy of 1st Lets (Glasgow) Limited email of 27 September 2022 was sent to the Applicant. Although the Applicant did not oppose the application to recall he raised a number of issues which questioned how, if as 1st Lets (Glasgow) Limited claimed, the application had not been received by the Respondent, as the wrong address was used, the Respondent knew of the decision. He stated that the Respondent's correct business address was used which was now clear and any issue with an employee not passing the paperwork to the Respondent was an internal issue for the Respondent. He also went onto explain that the Landlord Registration excerpt lodged with the application did not contain the Respondent's home address, hence the correct business address was used.
10. The Tribunal considered the application for recall and the Applicant's response. The Tribunal considers that there is nothing before it to show that 1st Lets (Glasgow) Limited have authority to act on behalf of the Respondent in this matter. They have been asked to provide a mandate. The Tribunal is aware from the application itself and the paperwork lodged by the Applicant in support of his application that the Respondent changed letting agents at some point between 1st Lets (Glasgow) Limited serving the Notice to Leave on 10 November 2021 and 22 March 2022 when G4 Properties were acting as the Respondent's letting agent. The Tribunal cannot assume that the Respondent has given authority for this recall application, particularly when no mandate has been received by the Tribunal after a specific request to provide one.
11. The application for recall states an incorrect personal pronoun is used. This is not a valid ground for recall. The Tribunal has corrected the decision.
12. The application for recall is based on the misunderstanding that there is an obligation on the Tribunal to refer to the Register of Landlords to get an agent's details and address. There is no such obligation. In terms of Rule 6A of the Rules where a Respondent's address is unknown service by advertisement can be sought. In this case, the Tribunal was advised by the Applicant that he was aware of the Respondent's business address. That information is shown to be correct. The Tribunal received an Execution of Service from the Sheriff Officers that after diligent enquiries they left the application paperwork in the hands of one of the Respondent's employees at

the business address of 194 - 204 Main Street, Wishaw. The employee is named in the said Execution, but not in the decision, there being no need to. The decision itself was sent to the Respondent at that same business address by the Tribunal on 14 September 2022. It appears to the Tribunal that the address of 194 - 204 Main Street, Wishaw is a correct address otherwise, as pointed out by the Applicant in his observations, how would the Respondent know about the decision. There is simply no foundation to assert that the address at 194 - 204 Main Street, Wishaw is “*incorrect*”.

13. Further there is nothing in the application for recall that sets out any possible defence. 1st Lets (Glasgow) Limited has not set out any stateable position. Rule 2 of the 2017 Regulations states that the overriding objective of the Tribunal is to deal with proceedings justly. Rule 3 provides the Tribunal must seek to give effect to the overriding objective when exercising any power under the 2017 Regulations. The Tribunal cannot find that it is in the interest of justice for matters to be delayed further in the circumstances where the recall does not set out the any stateable position. On balance, considering the position of both parties the Tribunal does not consider there is any cause shown to recall the decision. It is not in the interest of justice to recall the decision.

### **Decision**

14. The Tribunal accordingly refuses the application for recall dated 27 September 2022 made by 1st Lets (Glasgow) Limited.

### **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.**

S. Evans

**26 October 2022**

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**Legal Member**

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**Date**

