



Decision with 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 Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/EV/20/2501

Re: Property at 357 George Street, First Floor Right, Aberdeen, AB25 1EQ (“the Property”)

Parties:

Mr Graeme Tocher, c/o 2 Corse Grove, Bridge of Don, Aberdeen, AB23 8LR (“the Applicant”)

Mr Nwaora Randall Ene, 357 George Street, First Floor Right, Aberdeen, AB25 1EQ (“the Respondent”)

Decision

- 1. At Glasgow on the 16 April 2021, Lesley Anne Ward legal member of the First-tier Tribunal for Scotland Housing and Property Chamber with delegated powers of the Chamber President refuses the application for recall dated 11 April 2021.**

Background

- 2. This was a recall application in terms of rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’. The respondent failed to appear at a case management discussion ‘CMD’ on the 26 March 2021. The first CMD scheduled for 15 February 2021 was postponed at the respondent’s request due to a family bereavement. The tribunal wrote to the parties on 19 February 2021 notifying them of the new CMD scheduled for 26 March 2021. The respondent wrote to the tribunal chamber by email on 26 February 2021 seeking to have the CMD scheduled for 26 March 2021 at 2pm, postponed. That request was refused.**

3. The tribunal proceeded in his absence in terms of rules 24 and 29 as the tribunal was satisfied that the respondent was aware of the CMD, had received appropriate notice and it was fair to do so.
4. The application before the tribunal on 26 March 2021 was for eviction in terms of s33 of the Housing (Scotland) Act 1988. The tribunal granted the eviction on the basis that the short assured tenancy had reached its end and it was reasonable in all of the circumstances to grant the eviction.

Reasons

5. The tribunal wrote to the respondent with the decision on 30 March 2021 by first class recorded delivery post. The letter was signed for on 1 April 2021. The respondent wrote to the tribunal on 11 April 2021 asking for a recall of the tribunal decision. The tribunal notes that Rule 30(4) provides that "an application for recall must be made by a party and received by the First-tier Tribunal within 14 days of the decision". The tribunal notes that the rule does not provide for time for the decision to be sent to the parties. The rule simply provides for an application to be made and received by the tribunal within 14 days of the decision. This means that the recall application should have been made by the respondent by the 9 April 2021. It is open to the tribunal to extend the 14 days on cause shown. The respondent does not give any reason why his recall application is late nor does he ask the tribunal to extend its discretion and allow his recall application although late.
6. The applicant is opposed to the recall application and his agents have also sent in detailed written submissions. In paragraph 1 and 2 of their submissions, the applicant's solicitor states that the recall application is late and that no request has been made to extend the time.
7. Putting this matter to one side for the moment, there is no reason advanced in the recall application as to why the respondent did not attend the CMD on 26 March 2021 or why he was not represented. The respondent sets out his reasons of the recall application in some detail. The respondent appears to be disputing the validity of the notice to quit which forms the basis of the eviction order and the reasonableness of the order being granted. Despite running to some 7 pages, the recall application does not provide any reason why the respondent did not attend and was not represented at the CMD on 26 March 2021
8. I am refusing this application for recall. It has been made late and no explanation has been given for the delay and no request has been made to extend the 14 day period in terms of rule 30 (5). Further, even if this was a timeous application, I am not satisfied that it is in the interests of justice to grant

the application as the respondent has not advanced any reason for not attending the CMD.

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.

Lesley Ward

Lesley A Ward Legal Member

Date 15 April 2021

