

**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 (“the Tribunal Rules”)**

**Chamber Ref: FTS/HPC/EV/22/2224**

**Re: Property at 260 Dalriada Crescent, Motherwell, ML1 3YA (“the Property”)**

**Parties:**

**Mrs Patricia Steel, 49 Brackenhill Drive, Meikle Earnock, Hamilton, ML3 8AY (“the Applicant”)**

**Mr Sandor Ternai, 260 Dalriada Crescent, Motherwell, ML1 3YA (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Jane Heppenstall (Ordinary Member) (“the tribunal”)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for recall of its Decision of 19<sup>th</sup> October 2022 be refused.**

**Background**

1. The Applicant made an application for eviction dated 6 July 2022 which was accepted by the tribunal on 3 August 2022. The Applicant sought an eviction Order under Ground 12, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’) and the paperwork was served on the Respondent by Sheriff Officers service on 2 September 2022, by leaving the paperwork in the hands of the Respondent’s wife.

2. No written representations were received from the Respondent and a Case Management Discussion took place on 19 October 2022 at 10am. The Applicant participated, represented by her daughter Mrs Pipe. Mrs Pipe is the

joint owner of the Property along with the Applicant and assists with business matters. There was no participation by or on behalf of the Respondent.

3. The Tribunal issued a written decision dated 19th October 2022 granting the Application. A copy of the decision was intimated to parties on 19th October ("the decision").

4. On 10th November 2022, an e-mail was received on behalf of the Respondent asking for a recall and explaining:-

*"(1) The Respondent makes application to recall the decision taken by the Tribunal in his absence on the 19th of October 2022.*

*(2) The Respondent submits that it is in the interests of justice to recall the decision.*

*(3) The Respondent lives with his partner and their 4 children in his home. The Respondent and his partner are Hungarian Citizens and cannot speak, read or write in the English language. The Respondent did not attend the Case Management Hearing on the 19th of October because he could not read the correspondence notifying him of the hearing and did not know what to do. In the event that the Respondent and his family are evicted they have nowhere else to live.*

*(4) The Respondent acknowledges that there are rent arrears but submits that it is not reasonable in all of the circumstances of the application to grant an order for possession against him. The Respondent is employed on a low wage. The Respondent has made a claim for Universal Credit which has not yet been determined. The Respondent's home is in a poor state of repair and the Applicant has not taken timeous steps to repair the Respondent's home. The Respondent's financial circumstances are chaotic and the Respondent has only recently become aware that he may be entitled to Universal Credit. The Respondent specifically denies any allegation that the Applicant was not aware that the Respondent would live in his home with his family.*

*(5) The Respondent notes that the application to recall the proceedings is made outwith 14 days following the hearing. The Respondent could not obtain advice about how to proceed immediately and has only been able to obtain advice after the intervention of a friend who speaks and reads English.*

*Regards, Mr. Sandor Ternai"*

5. A copy of the Respondent's email of 10th November 2022 was sent to the Applicant on 14th November 2022. The Applicant submitted a detailed response on 16th November 2022 and subsequently indicated that she was opposed to the Respondent's application for recall.

## **Initial Consideration of the application for recall**

6. On 22<sup>nd</sup> November 2022, a legal member of the Tribunal considered the application submitted by the Respondent and considered it appropriate for a case management discussion to be arranged to consider the application for recall.
  
7. On 2<sup>nd</sup> December 2022, parties were advised that a case management discussion had been arranged for 13<sup>th</sup> January 2023 and that it would be held by teleconference. Parties were advised that a Hungarian interpreter would be provided for the case management discussion. The Respondent was provided with copies of the Decisions of the Tribunal dated 19<sup>th</sup> October and 22<sup>nd</sup> November 2022 which had been translated into Hungarian.

## **Case Management Discussion**

8. A case management discussion was held by teleconference on 13<sup>th</sup> January 2022. The Applicant and her daughter Mrs Suzie Pipe participated.
  
9. There was no appearance by the Respondent despite the commencement of the case management discussion being delayed by fifteen minutes. The Tribunal clerk attempted to telephone the Respondent but there was no response.

## **Rule 30 of the Tribunal Rules**

**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.*

10. The tribunal came to its Determination after a short adjournment.

## **Reasons**

11. It was noted that the application for recall had not been lodged timeously. In terms of Rule 30 (4), an application for recall requires to be made within fourteen days of a decision being issued. The relevant decision was intimated to parties on 19<sup>th</sup> October 2022 and any application for recall should have been submitted by 3<sup>rd</sup> November 2022. The Respondent submitted the application for recall on 10<sup>th</sup> November 2022 and, in the email which constituted the application, recognised that it had not been submitted timeously. He stated that he had been unable to obtain advice and had only been able to do so after the intervention of an English speaking friend.

12. The tribunal decided, in the interests of justice, to exercise its discretion to extend the time limit for making the application. The exercise of discretion is in terms of Rule 30(5) of the Tribunal Rules. In arriving at its decision, the tribunal noted the language difficulties which the Respondent has which caused delay in getting the appropriate advice and the fact that the application had been submitted a week late.

13. The tribunal considered the information provided by the Respondent in his application for recall of the decision of 19<sup>th</sup> October 2022. He stated that he did not attend the case management discussion on 19<sup>th</sup> October 2022 because he could not read the correspondence notifying him about the details of the it. In his application the Respondent accepts that there are rent arrears. He provided

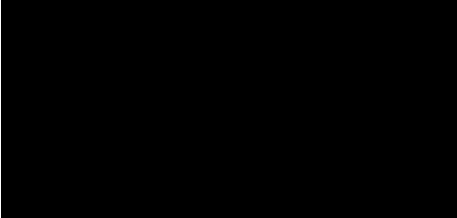
no information on why, having been served with documentation from the Tribunal, he had not sought assistance particularly, since he accepted that he had not paid the rent which was due, it would have been a reasonable assumption that the documentation related to his occupation of the Property.

14. The Respondent stated that it would not be reasonable to evict him because he is employed on a low wage and that he and his family have nowhere else to live. The Respondent stated that he had not known that he could have applied for Universal Credit. The tribunal did not consider that the Respondent had provided sufficient information on why it would not be reasonable to evict him and had not stated that the arrears of rent prior to the application for eviction being made had accrued because of any delay in Universal Credit being awarded to him.
15. The Respondent alluded to the Property being in a poor state of repair and the Applicant not repairing it. He provided no specification on this matter and the tribunal did not consider that sufficient information had been given to support any defence the Respondent may have to an application for eviction on the basis that rent was not lawfully due.
16. The Applicant, in her response to the application for recall stated that any defects in the Property which were reported to her by the Respondent were dealt with quickly.
17. The Applicant's written representations state that the Respondent failed to communicate with her when he was contacted with regards to rent arrears and signposting of sources of support and that the last payment of rent was received on 29<sup>th</sup> December 2021.
18. The tribunal considered that a party seeking recall of a decision and order requires to persuade it that it is in the interests of justice that it be recalled. A party seeking recall also has to provide information which would lead the tribunal to accept that there is merit in her/his case which would have been advanced at the case management discussion or Hearing which had not been attended.
19. The tribunal considered that the Respondent had failed to persuade it that there is merit in his position and that he would have substantive grounds for resisting the application for eviction. The Respondent had not assisted his case by failing to attend the case management discussion which had been arranged to consider his application. The tribunal determined that the application for recall should be refused.

## **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.**



**Legal Member  
13<sup>th</sup> January 2023**