

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Chamber Ref: FTS/HPC/EV/21/0821

Re: Property at 31/7 Whitehaugh Drive, Paisley, PA1 3PG (“the Property”)

Parties:

Mr Graham Boyle, Golden Mile Building 8, Apartment 307, Palm Jumeirah, DUBAI, United Arab Emirates (“the Applicant”)

Mr Gary Fogg, 31 Whitehaugh Drive, Flat 7, Paisley, PA1 3PG (“the Respondent”)

Tribunal Members:

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it is necessary in the interests of justice to review its own decision of 26 May 2021, recalls the Eviction Order previously granted on 26 May 2021, amends the designation of the Respondent to “Flat 31/7, 31 Whitehaugh Drive, Paisley, PA1 3PG, otherwise known as the northmost house on the top floor at 31 Whitehaugh Drive, Paisley, PA1 3PG of the tenement 29-33 (odd numbers) Whitehaugh Drive”, and grants the Eviction Order of new.

STATEMENT OF REASONS

1. On 26 May 2021, the Tribunal determined this Application and found that an eviction order should be granted against the Respondent. Following extraction of the eviction order, it became clear to the Applicant that the Application contained an error in that the designation of the Respondent, and the property in respect of which the eviction order was sought, was incomplete. The eviction order was incapable of enforcement as a result.

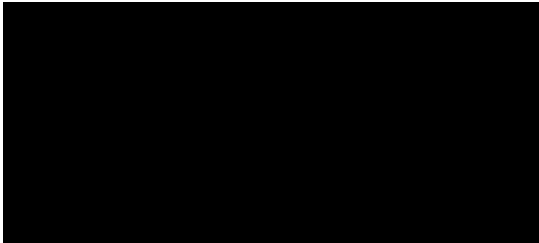
2. The Applicant's representative contacted the Tribunal in July 2021 to make it aware of the issue which had arisen. The Tribunal considered that it was necessary in the interests of justice to review the decision in respect that, having found that an eviction order ought to be granted, the said order could not be enforced.
3. The Tribunal wrote to the parties to advise of its decision to review the decision of 26 May 2021 at its own instance, and invite representations in support or opposition to the review. The Applicant's representative lodged written representations in support of the review. No representations were received from the Respondent.
4. The Applicant's representations set out what is an unfortunate set of circumstances. The application specified only that the property address was 31 Whitehaugh Drive. In fact, 31 Whitehaugh Drive forms part of the tenement 29-33 Whitehaugh Drive, and there are a number of flatted dwellinghouses at 31 Whitehaugh Drive. The property in question is flat number 7. The Application ought to have specified that the property address was "31/7 Whitehaugh Drive". Further specification could have also been provided, which was that the property was "the northmost house on the top floor at 31 Whitehaugh Drive, Paisley, PA1 3PG of the tenement 29-33 (odd numbers) Whitehaugh Drive".
5. In all of the circumstances, the Tribunal was satisfied that the decision should be reviewed, with the Eviction Order of 26 May 2021 recalled. There was no purpose to an unenforceable order subsisting. Thereafter, the Tribunal was satisfied that the Application ought to be amended to reflect the true designation of the property. Finally, given that the Respondent was still not engaging in the Tribunal process and there had been no change in circumstances since the granting of the Eviction Order on 26 May 2021, the Tribunal remained satisfied that the Eviction Order ought to be granted, and so it granted the Eviction Order of new, reflecting the true designation of the Property.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

16 August 2021

Date
