



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/1084**

**Re: Property at 79 Lamberton Drive, Glasgow, G52 2ET (“the Property”)**

**Parties:**

**Mr Muhammad Alam, 78 Maxwell Drive, Glasgow, G41 5PR (“the Applicant”)**

**Ms Charlene Brown, Mr Paul John Burgon, 2/1 13 Gladstone Avenue, Barrhead, Glasgow, G78 1QT (“the Respondents”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the application to recall lodged by the first-named respondent**

**Background**

1. By application dated 13<sup>th</sup> April 2022 the applicant sought an order for payment in respect of rent arrears.
2. A case management discussion (“cmd”) was assigned for 12<sup>th</sup> December 2022. The cmd was adjourned until 6<sup>th</sup> March 2023 to allow the first-named respondent to obtain legal advice and representation.
3. On 6<sup>th</sup> March 2023 the applicant attended the cmd on his own behalf. The respondents were not present or represented. The Tribunal noted that proper notice of the cmd had been given to the respondents and determined to proceed with the cmd in the respondents absence in terms of rule 29.

4. The Tribunal was satisfied that parties had entered into a tenancy agreement on 24<sup>th</sup> June 2020 in respect of a property at 79 Lamberton Drive, Glasgow G52 2ET.
5. The Tribunal was satisfied that there were rent arrears due in the sum of £6,533.84 and granted an order for payment in that sum.

### **Recall application – consideration and reasons**

6. By email dated 13<sup>th</sup> March 2023 the first-named respondent requested the order for payment be recalled. She stated that she had mistakenly thought the cmd was due to take place on 12<sup>th</sup> March 2023. She explained that she was in poor mental health at the time for which she was receiving counselling. She also stated that as she was bankrupt and had a trust deed the applicant could not pursue her for the outstanding arrears.
7. The Tribunal fixed a cmd to hear from parties on the recall application. A teleconference was scheduled for 5<sup>th</sup> June 2023. The applicant attended the cmd. Neither respondent was in attendance. The Tribunal was satisfied that parties had been properly notified of the cmd and determined to proceed to consider the recall application in their absence in terms of rule 29.
8. The applicant opposed the recall application. He explained that the respondents had paid nothing towards the outstanding arrears. An offer had been made to his letting agents in the past to repay £500 but this had been refused as it was too small an amount. The applicant referred to the poor condition the property had been left in by the respondents.
9. The applicant had no information in relation to the first respondent entering into a trust deed.
10. In terms of rule 30 the Tribunal required to consider whether it was in the interests of justice to recall the order granted on 6<sup>th</sup> March. The Tribunal determined that it was not in the interests of justice to recall the order. The Tribunal took into account that neither respondent attended the cmd to put forward reasons as to why the order should be recalled. The respondents had likewise failed to attend the previous cmd on 6<sup>th</sup> March 2023. An earlier cmd assigned for 12<sup>th</sup> December 2022 had also been adjourned to allow the first-named respondent to obtain representation which she had failed to do. The

respondents failure to engage with the process by attending cmds of which they had been given proper notice was persuasive in the Tribunal determining that it would not be in the interests of justice to recall the order. The Tribunal took into account the impact allowing the recall would have on the applicant's enforcement of the order. The Tribunal also took into account the first-named respondents failure to lodge any documentary evidence in relation to her health or her entering into a trust deed.

### **Decision**

In the foregoing circumstances the Tribunal determined to refuse the application to recall.

### **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.**

**Mary-Claire Kelly**

**Legal Member/Chair**

**5<sup>th</sup> June 2023**  
**Date**