

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision under Rule 38(3) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) (“the Procedure Rules”) in relation to a request for permission to appeal under section 46(3)(a) of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/22/4432

Property at 1/ 2 Eversley Street, Glasgow (“the Property”)

Parties:

Asdena Stars Properties Ltd (“the Applicant”)

Amy Smart, 1/ 2 Eversley Street, Glasgow (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The request for permission to appeal is refused.

Background

1. The Applicant lodged an application for an eviction order in terms of Rule 109 of the Procedure Rules and Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). The application was based on ground 5 of schedule 3 to the 2016 Act, namely that a family member of the Landlord intends to live in the let property. In response to a request for further information issued in terms of Rule 5 of the Procedure Rules, the Applicant stated that a director of the Applicant required to move into the property following a relationship breakdown.
2. The Legal Member considered the response and decided that the application must be rejected in terms of Rule 8(1)(a) of the Procedure Rules, namely that “the application is frivolous or vexatious”. The decision with statement of reasons was sent to the Applicant on 21 March 2023. The basis of the decision is that the Applicant is a limited company, not a natural person, and therefore cannot have a qualifying family member for the purposes of ground 5. On 28 March 2023, the Applicant sent an email to the Tribunal stating, “We would like

to appeal this decision.” The Tribunal responded to the email, advising the Applicant that they had until 18 April 2023 to provide additional information in relation to the request, if they wished to do so. No further correspondence or information was received.

Reasons for decision.

3. Section 46 Tribunal (Scotland) Act 2014 states -

(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made –

(a) By a party in the case.

(b) **On a point of law only.**

(3) An appeal under this section requires the permission of –

(a) The First-tier Tribunal, or

(b) If the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are **arguable grounds for the appeal.**

4. Regulation 37 of the Procedure Rules states -

(1) A person must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must –

(a) Identify the decision of the First-tier Tribunal to which it relates.

(b) Identify the alleged point or points of law on which the person making the application wishes to appeal; and

(c) State the result the person making the application is seeking.

5. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 (“the 2016 Regulations”) states –

(1) An application for permission under sections 46(3)(a) or 48(3)(a) of the Act (application for permission to appeal the Tribunal’s own decision) must be received by the Tribunal whose decision is being appealed against within the period of 30 days beginning with the relevant date.

- (2) The First-tier Tribunal or the Upper Tribunal, as appropriate, may on cause shown extend the period beyond 30 days if it considers such an extension to be in the interests of justice.
- (3) Subject to paragraph (4), the relevant date is the later of the date on which –
 - (a) The decision appealed against was sent to the appellant.
 - (b) The statement of reasons for the decision was sent to the appellant.”
6. The Applicant seeks permission to appeal the decision of the Tribunal on 17 March 2023, to reject the application. The decision with statement of reasons was issued on 21 March 2023. The Applicant’s request for permission to appeal was received by the Tribunal on 28 March 2023. It is therefore timeous. The application identifies the decision to which it relates. Although the Applicant does not explicitly state the desired outcome, it is evident that he is looking for the rejection decision to be quashed and the application accepted.
7. In the case of *Advocate General for Scotland v Murray Group Holdings Ltd* 2015 CSIH 77 the Inner House identified four different categories of case covered by the concept of an appeal on a point of law. These are stated to be, “(i) an error of general law; the content of its rules; (ii) an error in the application of the law to the facts; (iii) making findings in fact without a basis in the evidence; and (iv) taking a wrong approach to the case by, for example, asking the wrong questions or taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tribunal can properly reach”.
8. The request from the Applicant only states that they wish to appeal. They do not provide any further information. There are no appeal grounds and no point of law is identified.
9. The test to be applied by the Tribunal when assessing whether to grant permission to appeal, is whether the party seeking permission has identified an error of law that **is capable of being stated or argued before the Upper Tribunal**. This is a lower threshold than “a real prospect of success” (*Wightman v Advocate General* 2018 SC, Lord Carloway at 388).
10. The Legal Member notes that, although given the opportunity to expand upon the request, the Applicant has provided no grounds of appeal.
11. In the circumstances, the Legal Member is satisfied that the request does not disclose a point of law or arguable ground of appeal. The request is refused on that basis.

APPEAL PROVISIONS

A party aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

**Josephine Bonnar, Legal Member
5 May 2023**