



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/21/1664

Re: Property at Flat 1/3 308 Clyde Street, Glasgow, G1 4NP (“the Property”)

Parties:

Mr Amer Rafique and Mrs Nosheen Rafique, c/o Pacitti Jones, 2-6 Havelock Street, Glasgow, G11 5JA (“the Applicant”)

Mr Ryan Morgan, Flat 1/3 308 Clyde Street, Glasgow, G1 4NP (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for permission to appeal its Decision of 11 October 2021 should be granted.

Background

Following a Case Management Discussion on 11 October 2021, the Tribunal made a Decision to dismiss an application for an Eviction Order under Section 51 of the Private Housing (Residential Tenancies) (Scotland) Act 2016. On 19 October 2021, the Tenant sought permission to appeal the Tribunal’s Decision. The ground of appeal was that the Tribunal had erred in law in following the Upper Tier Tribunal decision in *Majid v Gaffney* ([2019] UT59) and holding that a Notice to Leave was invalid if the Eviction Ground stated in it did not exist at the date on which the Notice to Leave was issued.

Reasons for Decision

The Tribunal considered carefully the request for permission to appeal, which, in terms of Section 46 of the Tribunals (Scotland) Act 2011 can only be made on a point of law. The Tribunal had considered the Applicant’s legal argument at length in its written Decision and was of the view that its interpretation of the law had been

correct but, recognising the significance of the point at issue and the contention of the Applicant that *Majid v Gaffney*, on which the Tribunal had relied in arriving at its Decision, had been wrongly decided, the view of the Tribunal was that it would be appropriate for the question of the validity of a Notice to Leave issued in such circumstances to be considered by the Upper Tribunal for Scotland. Accordingly, the Tribunal decided to grant permission to appeal.

Right of appeal

A decision of the First-tier Tribunal relating to a permission to appeal request cannot be appealed or reviewed. Where permission to appeal is refused by the First-tier Tribunal, the party can seek permission to appeal the original decision from the Upper Tribunal. The party must seek permission to appeal to the Upper Tribunal within 30 days of the date the First-tier Tribunal's decision on the permission to appeal request.

G. Clark

_____ Legal Member

Date: 20 October 2021