

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**In connection with**

**70 D McDonald Court, Jute Street, Aberdeen, AB24 3HB**

**Chamber File Reference number: FTS/HPC/PR/19/3094**

## **The Parties:**

**Miss Chithra Seenivasan (“Applicant”) 14 F Sandilands Drive, Aberdeen, AB24 2 PX (“ the Applicant”)**

**Mr Stuart McFarlane, 20 Silverburn Road, Bridge of Don, Aberdeen, AB22 8RU (“the Respondent”)**

**Tribunal members: Valerie Bremner Legal Member**

## **1. DECISION**

The Tribunal refuses permission to appeal on all grounds in terms of Rule 38 of the Procedure Rules.

## 2. BACKGROUND

- i. On 19<sup>th</sup> December 2019, the Tribunal made a determination under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and produced a statement of decision ('the decision'). On 23<sup>rd</sup> December 2019, the Tribunal issued its statement of decision to parties. This Decision found that the Respondent had breached the Regulations and awarded a sanction in favour of the Applicant in the sum of £150.
  
- ii. By e mails, received by the Tribunal on 19<sup>th</sup> and 23<sup>rd</sup> December 2019, the Applicant applied to the Tribunal for permission to appeal the decision. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 provides that the application for permission to appeal must be received within 30 days of the date the decision was sent to the Applicant. The application is therefore timeous.
  
- iii. Rule 37(2) of the Procedure Rules provides that the written application to the Tribunal for permission to appeal 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.

The e mail of 19<sup>th</sup> December identifies the Tribunal decision to which it relates and identifies an alleged point of law on which the Applicant wishes to Appeal. The terms of Rule 37 are therefore complied with.

### **3.GROUNDS OF APPEAL AND REASONS FOR DECISION**

The ground of appeal founded upon by the Applicant is as follows: -

“A fundamental error in approach to the case. The Applicant seeks a new Hearing or the chance to provide further documents for proof”.It is further suggested by the Applicant that the decision was made on oral representations and not on the documents provided.

In addition the Applicant by virtue of an email dated 22<sup>nd</sup> December 2019 sets out allegations in relation to the conduct of the case management discussion.It would not be appropriate for the Tribunal to comment on these as there is a procedure for such concerns to be raised and it is not the purpose of this document to address factual concerns, rather to address whether a point of law has been raised which could be the subject of an Appeal.

First what must be considered is what is sought to be Appealed in this matter. The Applicant was successful in obtaining sanction against the Respondent landlord so the decision itself was in her favour. It is not suggested that the discretion of the Tribunal was used unreasonably in determining the amount of sanction awarded but that oral representations made by the Respondent were used to make the decision rather than documentation submitted.

Reference is made to the Tribunal’s decision dated 19<sup>th</sup> December 2019.It can be seen that the Tribunal was dealing with a breach of the Regulations which had already been admitted in written representations by the Respondent, who was permitted at the case management discussion to explain why this this breach had occurred. In determining the amount of sanction both parties were given the opportunity to comment as is the proper practice but the Applicant declined the opportunity to make any oral representations on this point. As can be seen from the Tribunal decision reference was made to the approach taken in *Jensen v Fappiano* and the Tribunal has set out the factors taken into account in making the decision.The Tribunal is therefore of the view that there is no error in approach here and therefore the point raised does not amount to a point of law.

The allegations made by the Applicant regarding the conduct of the case management discussion do not appear to be linked by the Applicant to the error of law alleged and there is no explanation as to how these allegations affected the outcome of the application in terms of the decision made in her favour or the sanction imposed.

The Applicant further submits additional evidence some of which relates to events after the case management discussion. It is not clear how these documents are relevant to a possible appeal in this matter when the party seeking to appeal was successful in the first instance and error in approach is alleged. As such the Tribunal does not consider that these can be construed as raising a point of law which could be appealed.

**As the Tribunal is of the view that the ground of appeal raises no point of law, leave to appeal is refused.**

#### **APPEAL PROVISIONS**

**4. 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.**

Valerie Bremner

**Chairing Legal Member of the Tribunal  
Dated: 10<sup>th</sup> January 2020**