

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

Case Reference: FTS/HPC/EV/23/2557

3/6 Dundee Terrace, Edinburgh (“the Property”)

Mohsen Jazayeri, 13 Buckstone Close, Edinburgh (“the Applicant”)

Muhammed Tahir, 3/6 Dundee Terrace, Edinburgh (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

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

Background

1. The Applicant lodged an application for an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A tenancy agreement and Notice to Leave were submitted with the application. The Notice to Leave is dated 27 March 2023. The date specified in Part 4 of the Notice is 21 June 2023. A post office certificate of positing was also submitted dated 28 March 2023. Despite several requests, the Applicant failed to submit a track and trace report or other evidence that the Notice was delivered or received.
2. A Legal Member of the Tribunal with delegated powers of the President considered the application and a request for further information was issued in terms of Rule 5. Following further correspondence with the Applicant, the Legal Member rejected the application in terms of Rule 8 of the Procedure Rules. The application was rejected because the Notice to Leave lodged with the application was invalid and because the Applicant failed to provide evidence that the Notice which had been sent by recorded delivery post had been delivered.

3. The written rejection decision with statement of reasons was issued to the Applicant on 24 November 2023. On the 29 November 2023, the Applicant submitted an application for permission to appeal stating “I wish to appeal your decision on 3/6 Dundee Terrace as I sent you proof of delivery which clearly states signed for by Tahir which is the tenant”. The email was accompanied by a copy of an email dated 4 October 2023, addressed to the Tribunal, a track and trace report and a further email which states that the Applicant arrived too late at the post office to send the Notice to Leave on 27th so it was sent on the 28th and the Applicant allowed 84 days plus two for delivery.

Reasons for decision.

4. 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.**

5. 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.

6. 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.”

7. 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).

8. The Respondent seeks permission to appeal the decision of the Tribunal to reject the application. This decision, with written statement of reasons, was issued to the Applicant on 24 November 2023. The application for permission to appeal was received on 29 November 2023. The request is therefore timeous. From the information provided, the Applicant appears to be asking for the application to be accepted, because he has provided the required documents.

9. The Legal Member is not persuaded that the request discloses a point of law or arguable ground of appeal. The Applicant claims that he provided the Tribunal with evidence that the Notice to leave was delivered to the Respondent. This is incorrect. On 4 October 2023, the Applicant submitted a copy of a post office certificate of posting. This had already been provided and the Tribunal had requested evidence of delivery, such as a track and trace report. On 31 October 2023, the Applicant was notified that they had not provide the requested documents and were again asked to do so. In response, a copy of other documents were lodged, but not evidence of delivery of the Notice to leave. This has only now been submitted, with the application for permission to appeal. However, even if the Applicant had submitted the track and trace, this would not establish an arguable ground of appeal. The principal reason for rejecting the application in terms of Rule 8(a) was that the Notice to leave which was lodged with the application was invalid and was not a Notice to leave in terms of Section 62 of the 2016 Act. There is no reference to this in the application for permission to appeal. The Applicant does not address the conclusion that the Applicant had failed to comply with both the Procedure Rules and the legislation regarding the Notice to leave. He does not explain why he disputes this conclusion.

10. In the absence of a relevant point of law or arguable ground of appeal, the request for permission to appeal is refused.

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
4 December 2023**