



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”) as amended in relation to a request for permission to appeal under section 46(3) (a) of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/RT/19/3633

Re: Property at Flat 3F1, 13 Gillespie Crescent, Edinburgh EH10 4HT (“the Property”)

Parties:

The City of Edinburgh Council, 101 Niddrie Mains Road, Edinburgh EH16 4DS (“the Third Party Applicant”)

Mr. Mark Edward Fortune, whose whereabouts are unknown (“the Landlord”), as successor to Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, 2 Corstorphine High Street, Edinburgh EH12 7ST, sometimes trading as EHPL Ltd, whose sole director was for a time Mr. Mark Edward Fortune (“the former Landlord”)

Tribunal Members:

Mrs Aileen Devanny (Chamber President) and Ms Carol Jones(Ordinary Member)

DECISION

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

Reasons

1. On 6 June 2024 the Tribunal issued a decision to vary the Repairing Standard Enforcement Order (RSEO) in relation to the Property, to refuse to grant a

certificate of completion in relation to the RSEO as varied including a direction that a notice of failure to comply with the varied RSEO be served on the Local Authority for the area in which the Property is situated (as required by Section 26(2) of the Housing (Scotland) Act 2006), and to make a Rent Relief Order (RRO).

2. On 24 June 2024 and 28 June 2024 Edinburgh Holiday and Party Lets Limited, the former Landlord, requested a review of a decision issued by the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) dated 6 June 2024 which decision was made in terms of Section 26(1) of the Housing (Scotland) Act 2006. The request for review was refused on 30 July 2024 as it was not a competent request as it did not originate from a party to the proceedings. The Tribunal decision dated 6 June 2024 removed Edinburgh Holiday and Party Let Limited as a party to the proceedings.
3. On 15 July 2024 Edinburgh Holiday and Party Lets Limited wrote to the Tribunal referring to an email sent by them on 8 July 2024. The email of 15 July sent to the Tribunal by Edinburgh Holiday and Party Lets Limited included the wording of the email of 8 July which showed that the email of 8 July was sent from a different email address to that of the email sent on 15 July with one email sent from an account ending “aol.co.uk” and the other from an account ending “aol.com”. The Tribunal administration carried out an extensive search of received emails and confirmed that no email was received by the Tribunal administration from Edinburgh Holiday and Party Lets Limited on 8 July 2024.
4. The email of 8 July 2024, if received, would have been lodged within the 30 day time limit for seeking permission to appeal but the email of 15 July 2024 was received late. However, the issue of time limits is academic as there is a more fundamental problem with the legal competency of the request.
5. The relevant legislation which provides for a permission to appeal request to the First-tier Tribunal for Scotland Housing and Property Chamber by a party is contained in Rule 37 of the Procedure Rules and Section 46 of the Tribunals (Scotland) Act 2014

Rule 37 of the Procedure Rules provides

37— (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.

Sections 46 of the Tribunals (Scotland) Act 2014 provides

(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.

Furthermore, in relation to the decision to vary an RSEO and issue a RRO, the Housing (Scotland) Act 2006 at Section 64(4) and (4A) provides in relation to an appeal that

(4) A landlord or a tenant aggrieved by a decision of the First-tier Tribunal —

(a) under section 24(1) (determination by the First-tier Tribunal) ,

(b) to vary or revoke a repairing standard enforcement order (see section 25),

(c) that a landlord has failed to comply with a repairing standard enforcement order (see section 26(1)),

(d) to make or not to make a rent relief order (see section 26(2)(b)),

(e) to revoke a rent relief order (see section 27(4)), or

(f) to grant, or to refuse to grant, a certificate under section 60 in relation to any work required by a repairing standard enforcement order,

may seek permission to appeal on a point of law only from the First-tier Tribunal within 30 days of being notified of that decision.

(4A) A third party applicant aggrieved by a decision of the First-tier Tribunal which—

(a) is mentioned in subsection (4)(a) to (f),

(b) was made following an application by the applicant under section 22(1A), may seek permission to appeal on a point of law only from the First-tier Tribunal within 30 days of being notified of that decision.

6. Edinburgh Holiday and Party Lets Limited confirmed on 1 August 2024 that the email of 8 July 2024 is to be treated as the request for permission to appeal.

Although academic given that Edinburgh Holiday and Party Lets Limited are not a party to proceedings, it is observed that the emails of 8 and 15 July 2024 taken individually or collectively do not meet the requirements for a permission to appeal request contained in Rule 37(2) of the Procedure Rules. It is only if the requests for review are considered with the emails of 8 and 15 July 2024 that there is an argument that Rule 37(2) (b) and (c) have been met. It is appropriate to state that should Edinburgh Holiday and Party Lets Limited have been a party to the proceedings, the Tribunal in the interests of fairness would have considered all the emails together as a permission to appeal request, even although some were received late.

7. The legislation detailed in paragraph 5 above makes clear that the only person who can seek permission to appeal a Tribunal decision is a party. The parties in relation to repairing standard applications are the landlord and a tenant or third party applicant. In the case of a third party application, the tenant can be added as a participating party on request by the tenant.

Edinburgh Holiday and Party Lets Limited stated in representations on more than one occasion that they are not the landlords of the Property. After considering all the evidence, including the oral evidence of Mr Fortune at a hearing, the Tribunal accepted this and varied the Repairing Standard Enforcement Order (“RSEO”) naming Mr Mark Edward Fortune as the landlord. The decision which is the subject of the permission to appeal request details this decision and the reasons for it. Edinburgh Holiday and Party Lets Limited is the former landlord. This company is no longer a party and has no interest to pursue a permission to appeal request or be designated the respondent. The parties in this case are Mr Mark Edward Fortune as Landlord and The City of Edinburgh Council as Third Party Applicant. The tenants have not sought to become participating parties.

The paperwork was served on Edinburgh Holiday and Party Lets Limited as the decision confirmed that they were not the landlord. The status of the company had changed from them being a party to not being a party and fairness required that this be notified to the company. The requirements of the varied RSEO from the date of the decision no longer apply to the company as they were by their own

submission no longer the landlord. The decision informing them of this was sent to them electronically on 11 June 2024.

8. Accordingly, the permission to appeal request received from Edinburgh Holiday and Party Lets Limited is not a competent request and is refused. Within the email received on 28 June 2024 the company asks to be reinstated as respondents which is at odds with their position that the company is not the landlord of the Property. A decision made in terms of Section 26(1) of the Housing (Scotland) Act 2006 is to decide whether a landlord has complied with an RSEO. No one other than a landlord of the Property can be a respondent. The same applies to decisions to vary an RSEO and to make an RRO. This is clear from Section 64 of the Housing (Scotland) Act 2006.
9. Having made a decision that the permission to appeal request is not competent, no further matters need be considered.
10. Edinburgh Holiday and Party Lets Limited make allegations as before on the conduct of the chairperson. The decision dated 6 June 2024 refers to the appropriate procedure for making such complaints.

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 a party may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

A decision of the First-tier Tribunal relating to a permission to appeal request cannot be appealed or reviewed.

A Devanny

Mrs Aileen Devanny

Chamber President

Dated: 26 August 2024