



First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Reference FTS/HPC/RT/19/3633

Title number: Subjects registered in the Land Register of Scotland under title number MID101053

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

The Parties

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

Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, Mail Box 46, 2 Corstorphine High Street, Edinburgh, EH12 7ST, sometimes trading as EHPL Ltd. Ltd. whose sole director is Mr Mark Edward Fortune (“The Landlord”)

Tribunal Members:

H Forbes (Legal Member)

C Jones (Ordinary Member)

Decision

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

Background

1. The Housing and Property Chamber issued a decision of the Tribunal dated 8th November 2022 determining that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property.

2. The Tribunal made a Repairing Standard Enforcement Order (“RSEO”) dated 8th November 2022. The decision and RSEO were issued to parties on 9th November 2022.
3. By email dated 15th November 2022, the Landlord submitted an application in the following terms:

Please take this letter as formal notice of a Review and or Appeal to the Upper Tribunal under the rules. It is respectfully suggested that the legal member Ms H Forbes has erred in law in regards this application.

Within the documents issued dated 8th November 2022 the Tribunal correctly names the parties and in regards the “Landlord” as Edinburgh Holiday and Party Lets Ltd [EHPL Ltd.], for completeness a company registered in Scotland SC577943. There is clear case law in regards a company being its own legal identity.

It has become apparent that on a number of occasions contrary to Rule 9, Ms Forbes conducted hearings, issued documents or other without giving the “landlord” EHPL Ltd. an invitation, copies of documents and or opportunity to defend itself. The Tribunal rules are clear and it is a fact that the Tribunal one more than one occasion excluded EHPL Ltd..

Further under the rules, the applicant MUST send a letter to the “landlord” before making an application and the tribunal cannot make any rulings or indeed accept an application before such has been produced. The applicant must also supply a copy of any document referred to as a lease. Rule 42 is clear that the landlord must have been notified of the works and a copy of said lodged with the applications. Ms Forbes erred in allowing the application to proceed in regards submitted documents and evidence heard In the above case documents were submitted under “TENANCY AGREEMENT” by the applicant – these were various documents from EHPL Ltd. additionally we believe the applicant submitted oral evidence that a Mr James Clegg’s landlord was 4m Ltd – a company registered in Scotland and again its own legal identity under the well-founded Doctrine. Evidence to housing benefits obtained and a lease from 4m Ltd had been seen by submitted to Edinburgh City Council to support the benefit application. Note 54 – Decision 17/5/21

Within the application papers a document ‘NOTICE TO LANDLORD’ was submitted, this appears to be a letter dated 8th October 2019 in the name of Mark Fortune and the words ‘I am writing to you, as you are listed as the registered owner’ – we understand this wording was used because Mr Ross had previously written to the incorrect owner of a property!

Notwithstanding Mr Fortune is not the landlord, he is not the ‘landlord’ referred to in the ‘Tenancy Agreements’ section nor the oral and written

evidence in regards Mr James Clegg. In short we the 'landlord' as determined in your correspondence dated 8th November 2022 nor 4m Ltd as detailed above and as such there has been NO confirmation or other that both limited Companies had been sent or delivered the relevant notice. Ms Forbes again erred in law as having had confirmed by Mr Ross [the applicant] that he had only ever delivered a letter to Mark Fortune and Ms Forbes ought to have been aware Mr Fortune is his own legal identity and clear case law separates Mr Fortune from any company he may or may not have been a director. For the application to have been valid the applicant should have supplied the Notice letters issued to Edinburgh Holiday & Party Lets Ltd and 4m Ltd, the applicant cant be excused under the view he thought the owner was the landlord has his application and evidence clearly confirmed his position was EHPL Ltd. were the landlord of some residents, 4m Ltd were the landlord for Mr Clegg and in essence to cover all basis 3 letters could have been issued.

Ms Forbes further erred in law by not placing importance on the words in the letter dated 8th October 2019. Had Mr Ross believed this was a letter to a landlord he would have written, 'I am writing to you as the landlord' he did not he used the word 'owner' and did so as he wrongly thought the true landlord EHPL Ltd. had stopped trading. It appears clear Ms Forbes has been unable to detach her true feelings in regards Mr Fortune and as such has erred in her profession judgment, Ms Forbes cannot with integrity confirm previous comments made to her as detailed in her written notes affected her ability to be impartial.

4. By emails dated 18th and 25th November 2022 the Landlord was asked to confirm the remedies they were seeking, as follows:

You state that this is 'formal notice of a review **and or** appeal'. Please clarify exactly what you are applying for, ensuring that you comply with the requirements of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, particularly Rule 37 (Application for Permission to Appeal) and Rule 39 (Review of a Decision).

5. By email dated 28th November 2022, the Landlord responded as follows:

*We are wishing the decision be reviewed.
If the tribunal is unwilling we will seek permission to appeal to the upper tribunal*

If permission is not granted we will seek the upper tribunal direct on a the point of law

6. The Tribunal considered the application for review and found that the application was wholly without merit. The Tribunal issued a decision dated 30th November 2022 refusing the application on 2nd December 2022.

7. By email dated 2nd December 2022, the Landlord stated the following:

We therefore wish to appeal the decision to the upper house on the points of law previously outlined. If the tribunal refuse we will lodge directly at the upper tribunal or seek an order at the Court of Session to set aside the decision in part as the Act was not followed unless you can confirm how the landlord (ourselves) was given notice pre application.

Meantime we will lodge a complaint with the judicial office in regards Forbes and her fraudulent actions and false statements and in short report her for perverting the course of justice inc a public statement

APPLICATION FOR PERMISSION TO APPEAL

8. 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 timeous.

9. 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.

10. The Respondent identified the Tribunal decision to which it relates, and also identified the alleged points of law. The Landlord states that they are seeking an order to set aside the decision in part, but no further explanation is provided as to which part of the decision they seek to have set aside.

11. In terms of Rule 38 of the Procedure Rules, the Tribunal must determine whether to give permission to appeal on each ground.

GROUND OF APPEAL AND REASONS FOR DECISION

12. The grounds of appeal founded upon by the Respondent are as follows:

(i) EXCLUSION OF EHPL Ltd. FROM PROCEEDINGS

The ground of appeal does not raise an arguable point of law. Leave to appeal is refused.

Reasoning for refusal of permission

The application was served upon Mr Fortune, the sole director of EHPL Ltd. and upon EHPL Ltd. at the start of the process. On 27th January 2020, Mr Fortune informed the Tribunal that EHPL Ltd. was no longer in existence. Mr Fortune continued to make representations to the Tribunal and took part in hearings. When Mr Fortune provided further information to the Tribunal, EHPL Ltd. were notified of proceedings and served with papers relating to the application from May 2021 onwards. EHPL Ltd. made no response or representations on any matter thereafter, until 8th December 2021, when EHPL Ltd. stated that they were no longer the landlord as the contract to sub-let the Property had been taken over by another party. Thereafter, Mr Fortune took part in proceedings and made representations. On 20th August 2022, EHPL Ltd. again stated they were the landlords, thereafter implying that the information provided by them in December 2021 had been inaccurate.

The Tribunal takes the view that EHPL Ltd. was not excluded from the proceedings. Throughout the long progress of the case, when it would now appear that EHPL Ltd. continued to be the landlord, despite the provision of contradictory information, their sole director made representations to, and participated in, Tribunal proceedings. Despite having papers served upon them at various stages in the case, EHPL Ltd. chose not to participate until the application had been decided.

(ii) NOTIFICATION OF REPAIRS REQUIRED

The ground of appeal does not raise an arguable point of law. Leave to appeal is refused.

Reasoning for refusal of permission

The Tribunal considers that notification was made upon the landlord, as Mr Fortune is the sole director of EHPL Ltd, and the registered owner of the Property. Notification of works required was made upon Mr Fortune at the registered address of EHPL Ltd. by the Third Party Applicant. The Third Party Applicant named EHPL Ltd in the application form as the landlord. In the Notice of Acceptance issued by the Tribunal, the Respondent was named as EHPL Ltd., and notification of the application was served upon Mr Fortune, EHPL Ltd, 2 Corstorphine High Street, Edinburgh, EH12 7ST.

Mr Fortune stated on 27th January 2020 that EHPL Ltd was no longer in existence, and he requested the papers be served on him at his '*domicile address*'. Thereafter, Mr Fortune continued to engage with the Tribunal by attending hearings, lodging copious representations on matters relating to the application including repairing matters, lodging an invoice, emailing and attempting to prohibit the Third Party Applicant representative from attending at the Property, claiming to have discussed matters with tenants and to have sought copies of documents from other owners in relation to communal roof repairs, providing information as to why inspections should not go ahead, and referring by email to EHPL Ltd. as his '*letting agents*'. From 24th to 28th June 2022, he submitted several emails trying to ensure that the inspection of the

Property did not take place, including references to booking security and seeking an interdict, both of which were intended to stop the inspection from taking place. He appeared, thus, to have been holding himself out as a representative of the landlord.

Section 22(3) of the Act, provides:

No application under this section may be made unless the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with that duty

The Tribunal considered the purpose of the notification required by section 22(3) of the Act. The purpose is to provide information to the landlord that repairs are required. Although the Tribunal thought it unfortunate that the Third Party Applicant had included the words '*as registered owner*' in the notification, it did not consider that this negated the purpose or effect of the notification. The purpose of the notification was fulfilled by drawing to the attention of the sole director of EHPL Ltd. that repairs were required.

The Tribunal takes the view that notification was made upon the landlord by service upon its sole director, Mr Fortune.

(iii) TRIBUNAL CHAIR HAS ERRED IN PROFESSION [SIC] JUDGEMENT

The ground of appeal does not raise an arguable point of law. Leave to appeal is refused.

Reasoning for refusal of permission

No evidence has been provided to support this ground of appeal. There is no evidence that the legal member has a wrongful or inappropriate inclination towards a party in the case, or that this has improperly affected her judgment. Making findings averse to the interest of a party is not to be conflated with erring in professional judgement.

RIGHTS OF APPEAL

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.

H Forbes

Legal Member/Chair
7th December 2022