

Housing and Property Chamber

First-tier Tribunal for Scotland



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 Ref: FTS/HPC/CV/19/2499

Re: Property at 39 Fitzroy Grove, Jackton, Glasgow, G74 5PQ (“the Property”)

Parties:

Dr Mutasem Elfalah, Mrs Nadia Muhaidat, PO Box 2911, Al Jubaiha 11941, Amman, Jordan (“the Applicant”)

Mr Simon Driscoll, Address Unknown (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Elizabeth Currie (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. On 22 November 2019, the Tribunal made a determination under Section 16 Housing (Scotland) Act 2016 (“the Act”) and produced a statement of decision (‘the decision’). On 26 November 2019, the Tribunal issued its statement of decision.

2. By email received by the Tribunal on 28 November 2019, the Respondent 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 timeous.
3. 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 Respondents email sets out 5 grounds of appeal. 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

4. The grounds of appeal founded upon by the Respondent are as follows: -
 - a. **Point 5: I have never received a copy of the trace carried as detailed within this point.** The Tribunal notes that this appeal point appears to relate to the Tribunal's observation in its decision that the Respondent did not lodge a transaction trace from his bank which had been the subject of a direction from the Tribunal. The document was due to be lodged within 7 days of the Respondent's receipt of same. The Tribunal notes that the Respondent did not notify the Tribunal in advance of the hearing that he was unable to comply with the direction. In any event, the Tribunal's observation as to the Respondent's failure was not the basis of the decision reached in this matter. Furthermore, no point of law is identified.

The ground of appeal raises no point of law. Leave to appeal is refused.

- b. **Point 6: I have never received any missed calls or voicemails from anyone trying to obtain further information.** The Tribunal notes that this point appears to relate to the Respondent's telephone call from a withheld number immediately before the start of the hearing, when he advised that he was unable to attend, and the Tribunal's subsequent attempts to make contact with him. It does not appear to relate to the decision reached by the Tribunal and does not identify a point of law upon which the Respondent wishes to appeal.

The ground of appeal raises no point of law. Leave to appeal is refused.

- c. **Point 7. The request for a postponement was made at short notice due to being involved in a car accident on the way to the hearing, unfortunately this is not something that could have been planned in advance.** The Tribunal notes that this point relates to the excuse offered by the Respondent for his non attendance at the Tribunal hearing when he contacted the Tribunal administration a few minutes before the start of the hearing. It does not identify a point of law upon which the Respondent wishes to appeal.

The ground of appeal raises no point of law. Leave to appeal is refused

- d. **Point 8: It was never stated that these payments were paid by debit card, it was confirmed that other payments, including the September payment had been made by debit card.** This point appears to relate to the Tribunal's finding that there were discrepancies between what the Respondent stated at the CMD and a document he sent to the Applicant and which was lodged by them. It does not identify a point of law upon which the respondent wishes to appeal.

The ground of appeal raises no point of law. Leave to appeal is refused.

- e. **Point 10: Regardless of living in the property alone regardless of the number of bathrooms and agreement was made that all these issues would be resolved before entry.** This point appears to relate to factual conclusions reached by the Tribunal with regard to the Respondent's claim that he was entitled to an abatement of rent. It does not identify a point of law upon which the Respondent wishes to appeal

The ground of appeal raises no point of law. Leave to appeal is refused.

The Tribunal also notes that although the email from the Respondent identifies the Tribunal decision to which it relates it does not state the result the Applicant is seeking. Leave to Appeal is also refused on this basis.

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.

Where a party seeks permission to appeal and this permission to appeal is refused, the decision will be treated as having effect from the day on which the refusal was made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission to appeal is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses permission.)

If permission to appeal against the decision of the First-tier Tribunal is granted, the effect of the decision and of any order made in consequence of it is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or determined.

Josephine Bonnar

Josephine Bonnar
Legal member and Chair
15 December 2019