

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

In connection with

26 Firthview Terrace, Dumbarton (“the Property”)

Case Reference: FTS/HPC/EV/20/3734

Parties:

Mr Russell Beese, 10 Trough Lane, Watnall, Nottingham, NG16 1HR (“the Applicant”)

Miss Jacqueline Clark, Mr Graeme Hendry, 26 Firthview Terrace, Dumbarton, G82 4DT (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Greig Adams (Ordinary Member)

Decision

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

Background

1. By application dated 21 November 2019 the Applicant sought a payment order in relation to unpaid rent.
2. A hearing was scheduled to take place on 7 April 2020. This was postponed as a result of the Government restrictions imposed due to COVID 19. On 9 July 2020 parties were notified that the hearing would take place on 29 July 2020 at

10am by conference call. Both parties were provided with a telephone number and passcode. Prior to the hearing the Respondents did not lodge any further documentation but notified the Tribunal that they intended to vacate the property on 31 July 2020. The Applicants lodged some copy emails and text messages. In addition, an updated rent statement was lodged on 28 July 2020. Both parties were advised by the Tribunal that the paperwork lodged by parties in connection with the repairing standard case, together with the decision and RSEO issued by the Tribunal in that case, may be considered by the Tribunal at the hearing.

3. The application called for a hearing on 29 July 2020, by telephone conference call. The Applicant participated and was represented by Mr Daniel. The Respondents both participated. Following the hearing the Tribunal granted a payment order in favour of the Applicant
4. On 13 August 2020, the Respondents sent an email to the Tribunal which states "I would like to appeal against the decision against myself Jacqueline Clark and Graeme Hendry. I would like to let you know that Mr Russel Beese has took matters into his own hands by going to the house and changing the locks so we can't get back into the property so the police are now involved and we are waiting on lawyers to be in touch as we are take the matter further as Mr Russel Beese has broke the law by entering the house when we haven't received any paperwork for the eviction order but yet he's now lock us out of the property when we still have a few things to get from the house."
5. On 17 August 2020, the Tribunal acknowledged the application for permission to appeal. The Respondents were referred to the terms of Section 37 of the Procedure Rules and advised that they if they wished to add any further information to the application they should do so within the relevant time limit for applications for permission to appeal. No response was received and no further written representations lodged. On 26 August 2020 the Respondents telephoned the Tribunal to ask when they would receive a decision on their request.

Reasons for decision

6. 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.”

7. 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.

8. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 provides that an application for permission to appeal must be received within 30 days of the date the decision was sent to the parties. The application is timeous.

9. The Respondents have identified the decision to which the request relates, being the decision of the Tribunal dated 29 July 2020 to grant a payment order against the Respondents. The Respondents have therefore complied with (2)(a) of Rule 37.

10. In the email of 13 August 2020, the Respondents indicate that the Applicant has broken the law by taking possession of the property and changing the locks, before the eviction order has been issued by the Tribunal. However, these alleged events appear to have occurred since the hearing and the granting of the order in favour of the Applicant. The Respondents do not appear to be challenging the decision, which was made by the Tribunal, but rather take issue with the Applicant’s actions in relation to the property since that decision was made. No point of law in relation to the decision is identified. Furthermore, the Respondents do not state the result that they are seeking. The Respondents have therefore failed to comply with 2(b) and (c) of the Procedure Rules and Section 46(2)(b) of the Tribunal (Scotland) Act 2014.

11. The Tribunal therefore determines that the Respondents have not identified a point of law or stated the result they are seeking. 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
30 August 2020**