

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

In connection with

Chamber File Reference number: FTS/HPC/CV/18/1084

Re: Property at Flat B 53 Rose Street Aberdeen AB10 1UB (“the Property”)

The Parties:

Mr Daniel Buda, 39/6 Comely Bank, Edinburgh, EH4 1AG (“the Applicant”)

Miss Oana Iosif, 49 Harehill Road, Bridge of Don, Aberdeen, AB22 8RH (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Melanie Booth (Ordinary Member)

1. DECISION

The Tribunal refuses permission to appeal on all grounds in terms of Rule 38 of the Procedure Rules. The decision of the Tribunal was unanimous (if appropriate).

2. BACKGROUND

1. The Applicant lodged an application on 30th April 2018 for a claim for damages and cleaning arising from the end of the tenancy of the Property between the Applicant and the Respondent. He claimed the sum of £2,504.63, narrating that “the deposit was not lodged correctly and was lost, the deposit has been awarded to the former tenant by this tribunal this is a genuine counterclaim for genuine expenditure suffered at the end of the former tenant’s tenancy which I require to be recovered. I am also claiming

for costs regarding damage caused during the tenancy to the kitchen window.”

2. A hearing in the above application took place on 6th September 2019 at 2pm in the Glasgow Tribunal Centre. The Respondent attended and brought her husband Mr Rohan Baboolal as a witness. The Applicant did not attend. The Applicant along with the Respondent was advised of the date of the Tribunal Hearing by letter and recorded delivery letter as well as by e-mail. The Tribunal made a determination under S 16 of the Housing (Scotland) Act 2014 (“the Act”) and produced a statement of reasons for the decision (“the decision”). On 17th September the Tribunal issued its statement of decision with reasons.
3. By e-mail dated 25th September and confirmed in further e-mails dated 26th September, the Applicant applied to the Tribunal for recall of the decision, review of the decision and permission to appeal the decision. The Tribunal has considered and rejected the application to recall or review the decision as per the separate decisions made under those grounds.
4. 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.
5. 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 letter identifies the Tribunal decision to which it relates and states that the Applicant is seeking the following result an order for payment.

The letter also sets out 2 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.

6. GROUNDS OF APPEAL AND REASONS FOR DECISION

- a. The Applicant in his first e-mail of 25th September asks “Please have this case recalled and reviewed in accordance with the procedure. I also seek permission to appeal. In the meantime please supply a payment order so that I can instruct a sheriff officer forthwith.”
- b. The Tribunal Administration responded on 26th September asking which procedure he wished to apply for and providing guidance notes on the recall, review and permission to appeal procedures and also

advising that no payment order was due as per the decision issued to the Applicant.

c. The Applicant responded stating:-

“ As per point 7.

The Respondents previous deposit was returned to her as evidenced by documents passed into this Tribunal previously.
Please issue the payment order.”

The Applicant responded by e-mail again stating:-

“this is not the case as per point 7.

I wish for the decision to be recalled and reviewed.

I also seek permission for this to be appealed.

Clearly evidence has been overlooked or ignored in the respondents favour as evidenced.

Another example of this: outcome details that my evidence was not supplied to the member in colour. Can you please explain this? All evidence was supplied to you in colour.”

d. On 7th October the Tribunal wrote to the Applicant noting

“that you have asked for the following in the above case:

** a recall of the decision*

** a review of the decision and*

** an appeal of the decision.*

And in respect of the application for permission to appeal asked

Thirdly - please identify the alleged points of law you wish to appeal and the result you are seeking? Again please identify this within 7 days.

e. The Applicant has not responded to this request so there is no further explanation or points of law raised..

7. The first ground of appeal appears to be that that the Applicant is entitled to an order for payment because of point 7 of the decision. Point 7 in the reasons of the decision states

“For the above reasons the Tribunal found that the Respondent was only responsible for damage to the kitchen worktop and one glass/mug. The cost of these items would be £300 plus no more than £1 for the glass/mug based on the Applicant’s estimate of the cost of replacements. Given the Applicant has not returned the Respondent’s

deposit of £575 this deposit would require to be deducted from any sum due to the Applicant and therefore no order for payment is due or required.”

8. The Tribunal did agree that there was damage to the worktop and the Respondent admitted this damage to the kitchen worktop and that one glass or mug had been broken. The Applicant appears in his e-mail requesting the permission to appeal, to believe that this entitles him to an order for payment of that amount. However the Tribunal found that as the deposit has not been returned to the Respondent and that the Applicant has retained the deposit he is therefore compensated for that damage. In addition there was no proof the damage has in fact been repaired.

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

9. The second point the Applicant makes is:
“Clearly evidence has been overlooked or ignored in the respondents favour as evidenced.

Another example of this: outcome details that my evidence was not supplied to the member in colour. Can you please explain this? All evidence was supplied to you in colour.”

10. The Tribunal has considered all evidence provided by the Applicant in writing. The Applicant did not attend any CMD nor the hearing itself so there has been no oral evidence from the Applicant to explain or supplement the written evidence. The Applicant did not respond to the Direction issued on 26th April 2019 which amongst other requests asked for “documentary evidence from the tradesmen who carried out the work invoiced as part of the claim that all of the works invoiced for had been carried out and that all invoices were paid; asked for an address and contact details for Moir Cleaning and written details of any personal, family, ownership, employment or financial relationship between him and Crombie and Company, GAB Home Improvement and Moir Cleaning.”
11. The Tribunal only had copies of photographs which were black and white including photographs from both the Applicant and the Respondent. The Tribunal is satisfied that the totality of all the evidence provided supports the decision it has reached and that failure to see colour photographs is not material in this case given the other written evidence, oral evidence and supporting written evidence from the Respondent and her witness and lack of evidence from the organisations purportedly used by the Applicant to clean the property, and other tradesmen, after the Respondent left that they did in fact carry out this cleaning and other repairs and lack of any evidence that these organisations exist and are independent of the applicant.

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

WHERE APPEAL REFUSED ON ALL GROUNDS:

4. 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.

**Chairing Legal Member of the Tribunal
Dated: 24th October 2019**