

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/19/0040**

**Re: Property at Flat 2/2, 152 Earl Street, Glasgow, G14 0BP (“the house”)**

**The Parties:**

**Mr Colin Manclark, 96 Arrowsmith Avenue, Glasgow, G13 2QL  
 (“Applicant”)**

**Mr Sam Windsor, 414 Alderman Road, Glasgow, G13 4LD  
 (“Respondent”)**

**Tribunal members: Martin J. McAllister (chairing legal member); Frances Wood (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.

### **2. BACKGROUND**

- i.** On 12<sup>th</sup> July 2019 the Tribunal made a determination under Section 16 of the Housing (Scotland) Act 2016 (“the Act”) and produced a statement of decision (“the decision”). On 16<sup>th</sup> July 2019, the Tribunal issued its statement of decision.
- ii.** By letter dated 19<sup>th</sup> July 2019, received by the Tribunal on 23<sup>rd</sup> July 2019, the applicant 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.

iii. 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 that the Respondent be found liable to pay a sum in respect of rent arrears which the Tribunal found that he was not liable.

The letter also sets out various matters with a ground of appeal. In terms of Rule 38 of the Procedure Rules, the Tribunal must determine whether to give permission to appeal on each ground.

### **3. GROUNDS OF APPEAL AND REASONS FOR DECISION**

The ground of appeal founded upon by the applicant is as follows:-

The Tribunal erred in finding that the Respondent had no access to the house during the period of notice and that, therefore, the Respondent was due to pay a sum to the Applicant in respect of rent for the notice period.

The Applicant raised a number of matters in his letter which he did not at the Hearing. The Tribunal made its finding on the period of notice on the evidence before it and it was reasonable to come to view that it had. The evidence consisted of the oral testimony of the parties and the written documentation submitted including copies of social media/text messages exchanged between the parties.

In his letter of 19<sup>TH</sup> July 2019 the Applicant either raised matters in support of his position which had not been raised by him at the hearing or had been and the Tribunal took them into account when exercising its discretion in coming to the Decision which it did. Included in the submissions made by the Applicant was that the Respondent could have had access to the House during the period of notice. This was not supported by the evidence.

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

**The decision was unanimous.**

## **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.**

Martin McAllister

**Martin J. McAllister  
Chairing Legal Member of the Tribunal  
29<sup>th</sup> July 2019**