

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision under Section 46(3)(a) of the Tribunals (Scotland) Act 2014 and Rule 38(3) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/19/1444

Re: Property at 130 Hamilton Place, Aberdeen, AB15 5BB (“the Property”)

Parties:

Mr Edward Adderley, 106 Clifton Road, Aberdeen, AB24 4RD (“the Applicant”)

Mr Peter Mearns, 6A St Swithin Street, Aberdeen, AB10 6XE (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Mike Scott (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered the Respondent’s application for permission to appeal in terms of Section 46(3)(a) of the Tribunals (Scotland) Act 2014 and determined to refuse permission to appeal in terms of Rule 38(3) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

Background:

1. The Applicant lodged an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to repayment of rent paid under an assured tenancy agreement.
2. A Hearing took place on 22 October 2020 at which the Tribunal granted an order against the Respondent for payment of the sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£7, 650) STERLING to the Applicant.

3. On 15 November 2020, an application by the Respondent for permission to appeal the Decision of the Tribunal was refused.
4. On 15 December 2020 the Respondent submitted an application for a Time to Pay Direction under section 1 of the Debtors (Scotland) Act 1987 (“the Application”). The Respondent sought to repay the sum due at the rate of £200 per calendar months. On 23 December 2020 the Applicant submitted his written opposition to the Application.
5. A Hearing took place on 19 February 2021 by way of tele-conference, to determine the Application. The Applicant was personally present at the Hearing, supported by his wife. The Respondent did not appear nor was he represented. After consideration of the terms of the Application, and hearing submissions by the Applicant as to his opposition to said Application, the Respondent’s Application for a Time to Pay Direction was refused.

Application for Permission to Appeal:

6. By way of email dated 22 February 2021, the Respondent requested permission to Appeal the Decision of the Tribunal of 19 February 2021 (“the Decision.”). In said email it was stated:

“Thank you for your latest email/letter which informed me that the latest hearing was in fact conducted on the 19th of February. I apologise for missing this due to a misunderstanding. I had anticipated a notification in the days prior to the hearing, as has been the case on previous occasions, so I did not refer to the letter from mid January. This I accept was an error on my part. As previously stated a single payment at this time would cause extreme hardship due to covid and Brexit losses of income, so I wish to again appeal for payment in instalments.”

Findings

7. The Tribunal considered matters in terms of the provisions of Section 46 of the 2014 Act and Rules 37 and 38 of the Rules.
8. Section 46 of the 2014 Act states:

Appeal from the Tribunal

(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.

(5) This section—

(a) is subject to sections 43(4) and 55(2),

(b) does not apply in relation to an excluded decision.

9. Rule 37 of the Rules states:

Application for permission to appeal a decision of the First-tier Tribunal

(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.

10. Rule 38 of the Rules states:

First-tier Tribunal's consideration of application for permission to appeal

(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision to the parties and any interested party as soon as reasonably practicable.

(3) If the First-tier Tribunal refuses permission to appeal on any point of law, it must provide its decision—

(a) a statement of its reasons for such a refusal; and

(b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

11. The Tribunal determined that the application for permission to appeal does not comply with the requirements of either section 46 of the 2014 Act or Rule 37 of the Rules. Whilst the application for permission to appeal does identify the decision of the Tribunal to which it relates (being the decision dated 19 February 2021 to refuse the Application for a Time to Pay Direction (“the Decision”), the application does not identify a point of law that the Respondent wishes to appeal.

12. The application to appeal the Decision of the Tribunal to refuse the Application for a Time to Pay Direction does not comply with Rule 37 as aforesaid as it fails to state any point of law upon which the Tribunal erred in coming to its Decision. Accordingly, the application for permission to appeal is refused on that basis.

Fiona Watson

Fiona Watson
Legal member

Date: 8 March 2021

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.