

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/EV/22/3486

Re: Property at Craigroyston, Culbokie, Dingwall, IV7 8LA (“the Property”)

Parties:

Ms Stella Keith, 17 Englishton Muir, Bunchrew, Inverness, IV3 8RQ (“the Applicant”)

Mr Colin Mackie, Victoria Mackie, Craigroyston, Culbokie, Dingwall, IV7 8LA (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Sandra Brydon (Ordinary Member)

1. DECISION

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

2. BACKGROUND

- i. On 3 March 2023, the Tribunal granted an application under Rule 109 and section 51(1) of the **Private Housing (Tenancies) (Scotland) Act 2016** for eviction and recovery of possession on Grounds 4 and 12 Schedule 3 to the Act.
- ii. The Tribunal’s Decision was sent to the Respondent under cover of letter dated 3 March 2023.

- iii. By email dated 3 March 2023, received by the Tribunal on that date, the Respondent asked the Tribunal to allow the maximum time possible to find another Property (not before 1 September 2023), disputed the Applicant suffered any financial hardship, stated that all rental arrears would be settled before vacating the Property and asked for the Tribunal not to make the Respondent homeless.
- iv. The email was not seen by the Tribunal who dealt with the Case Management Discussion (**CMD**) until after the CMD had concluded and the order granted.
- v. The Tribunal wrote to the Respondent by email of 6 March 2023 in the following terms:

“Unfortunately your email was not forwarded to the Tribunal dealing with the CMD until after the CMD had concluded. The Tribunal made a Decision in your absence granting both applications for an eviction order and a payment order. You will receive copies of these shortly.

As the Tribunal made its Decision in your absence you should consider whether or not you wish to apply for recall of the Tribunal's Decision under Rule 30 of the Tribunal Rules, review of the Tribunal's Decision under Rule 39 or for permission to appeal the Tribunal's Decision under Rule 37.

You may wish to consider obtaining advice from a solicitor, Shelter or the CAB.”
- vi. The Respondent sent a further email to the Tribunal on 14 March 2023 in the following terms:

“I wish to appeal this decision as I can see no evidence of the landlord proving financial hardship.

After having discussion with my housing officer, Joan Mackay, I have been advised to "lodge an appeal if you did not attend and you don't have evidence that eviction will be deferred"

This is because it has proven extremely difficult for me to secure another property and I am concerned that myself and my husband will be rendered homeless along with 2 dogs. I am asking for the maximum time possible to find another property.”
- vii. The Tribunal treated this as an application the Tribunal for permission to appeal the Decision. 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 Applicant. The application is timeous.
- viii. 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 email identifies the Tribunal Decision to which it relates and sets out potential grounds of appeal as follows:

1. There was no evidence of the Applicant's financial hardship;
2. The Respondent didn't attend;
3. It will be difficult for the Respondent and their 2 dogs to secure another Property and they may be rendered homeless; and
4. The Respondent wishes the maximum time to find another Property.

- ix.** 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

- i. The Respondent sets out the Grounds of Appeal above. The Tribunal dealt with each Ground in turn

Ground 1.

- ii. The application was made under Grounds 4 and 12 of Schedule 3 to the Act. Those Grounds do not require an Applicant to establish financial hardship.

Ground 2

- iii. The Respondent did not attend the CMD. The Respondent had been served with notification of the CMD and was aware that a Decision could be made in absence. The Respondent's email of 3 March 2023 did not disclose any substantive defence to the application. At its highest the email set out the Respondent's wish to delay the order as long as possible and set-out the difficulty the Respondent was experiencing in finding alternate accommodation.

Ground 3

- iv. These were matters which the Tribunal would have taken into account in the consideration of reasonableness had the Respondent participated in the CMD.

- v. The Tribunal did not consider the circumstances described would have altered the Decision.

Ground 4

- vi. Whilst it is understandable that the Respondent would like as long as possible to find alternate accommodation this would not have altered the Tribunal's Decision.
- vii. In terms of section 46 of the Tribunals (Scotland) Act 2014:-
"46 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."
- viii. After consideration of the application for permission to appeal, the Tribunal consider that permission should be refused. The Respondent does not identify any point of law. The Respondent does not set out any defence to the application for eviction which was granted on the basis of Grounds 4 and 12. The Tribunal had been satisfied at the CMD that the Applicant had produced sufficient evidence in support of the Grounds and that it was reasonable to grant the order sought.
- ix. The Tribunal is not satisfied that the application discloses an arguable ground for the appeal. The application for permission to appeal is refused.

APPEAL PROVISIONS

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.

A. Strain

**Legal Member of the Tribunal
Dated: 31 March 2023**