

Housing and Property Chamber

First-tier Tribunal for Scotland



Regulation 38 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Reference number: FTS/HPC/EV/21/1338

Property: 8 King Street, Carstairs Junction, Lanark, ML11 8RJ

Parties:

Isabella McDonald, 17 Pettinain Road, Carstairs Junction, Lanark, ML11 8RF
("the Applicant")

John Harry Shaw, 8 King Street, Carstairs Junction, Lanark, ML11 8RJ ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)

Mary Lyden (Ordinary Member)

Decision

The Respondent's Application for permission to appeal against the Tribunal's decision dated 18 September 2021 is refused.

Reasons for decision

1. By email dated 18 September 2021 the respondent seeks permission to appeal the decision of the First-tier Tribunal for Scotland, Housing and Property Chamber, dated 16 September 2021. That decision was made at a Case Management Discussion.

2. The grounds of appeal are that the First-tier Tribunal should not have made an eviction order but should have continued the Case Management discussion because

(i) The respondent had appointed his mother as his representative on 1 September 2021, but his mother had not been sent the details which would allow her access to the Case Management Discussion (which was conducted by telephone conference), and

(ii) The respondent had made a written application for an adjournment to allow further time to prepare and to allow time to take legal advice.

3. Notice of the Case Management Discussion together with a copy of the application was served on the respondent by Sheriff Officers on 16 August 2021.

4. The respondent was arrested on 15 August 2021. He was released on bail. It is likely that one of the conditions of bail prevents the respondent from returning to the property.

5. On 29 August 2021 the respondent's mother removed the respondent's possessions from the property.

6. On 31 August 2021 the respondent's mother emailed the Tribunal saying that she has been appointed as the respondent's representative. The respondent's mother asked for a continuation for further time to prepare, and said that she had access to the property from 29 August 2021. On 1 September the respondent provided written authority for his mother to act on his behalf.

7. The emails from the respondent and from his mother clearly demonstrate that they both had the details of the time, date and teleconference arrangements for the Case Management Discussion. The respondent, in his email of 1 September 2021, quotes the tribunal reference number for this case. He would not have that reference number if he did not have a copy of the application.

8. The letter, addressed to the respondent, intimating the details of the Case Management Discussion includes the following sentence

Any written representations **must** be returned to this office by **2 September 2021**.

9. The respondent has not made any written representations about the substance of the application.

10. The Case Management Discussion took place on 16 September 2021. The hearing was delayed to enable the respondent to participate, but he did not join the telephone conference and he was not represented.

11. The respondent received service of the application on 16 August 2021. Even if he did not see the application until 31 August 2021, he still had at least 16 days in which to seek representation. He had time to consider the application and make written representations.

12. The respondent did not participate in a Case Management Discussion of which he had timeous notice. He does not provide any realistic explanation for his failure to participate, nor does he provide detailed evidence of an impediment to participation. The fact that he is involved with the criminal justice system does not explain (for example) why he did not have access to a telephone.

13. An appeal can only competently be made on a point of law. The respondent's application for permission to appeal is based on an argument that he was deprived of a fair hearing. The respondent was able to communicate with the tribunal on 1 September 2021. The respondent knew about the time, date, and method of the Case Management Discussion and

had the details which enabled him to join the telephone conference on 16 September 2021.

14. The respondent was given the same notice and details of the Case Management Discussion as the applicant. The letter, addressed to both parties, intimating the details of the Case Management Discussion includes the following sentences

The tribunal may do anything at a case management discussion which it may do at a hearing, including make a decision on the application...If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair

15. The reality is that the respondent was given fair and timeous notice of the Case Management Discussion but did not participate in the hearing and did not make written submissions. The tribunal made enquiry, in the respondent's absence, into an unchallenged application.

16. The application for permission to appeal does not identify an arguable error of law; it is merely a disagreement with the conclusion the Tribunal reached on the facts as the Tribunal found them to be. The application is simply an attempt to relitigate this appeal on evidence which is still not before the First-tier Tribunal. The respondent seeks permission to appeal, but still, coyly, offers neither response nor defence to the application.

17. The First-tier Tribunal took correct guidance in law and made evidence-based findings of fact before reaching conclusions well within the range of available reasonable conclusions. The grounds of appeal are a disagreement with the conclusions drawn from the facts as the First-tier Tribunal found them to be. The grounds of appeal do not identify an arguable error of law. There are no arguable grounds of appeal. Permission to appeal is refused.

Decision

Permission to appeal is refused in terms of reg38(3) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only.

In terms of section 46(3) of the Tribunal (Scotland) Act 2014, as the First-tier Tribunal has refused permission to appeal, a party can apply to the Upper Tribunal for permission to appeal the decision. That party must seek permission to appeal, in writing, within 30 days of the date this decision is sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.



Paul Doyle

Signed
Legal Member

27 September 2021