

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/PR/21/0921

Re: Property at 219/8 High Street, Edinburgh, EH1 1PE (“the property”)

The Parties:

Mr Peter Bills-Brown, 4/6 Paisley Close, 101 High Street, Edinburgh, EH1 1SP and Mr Charlie Barnett, 6 Nicolson Court, Maddiston, Falkirk, FK2 0LB (“the Applicants”)

Mr Adam Geoffrey Shaw, 32 Inverleith Terrace, Edinburgh, EH3 5NU (“the First Respondent”) and Mr Kadeer Aslam, address unknown (“the Second Respondent”)

Tribunal members: Mr Martin McAllister (chairing legal member); Mrs Helen Barclay (ordinary member)

Decision

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 4th April 2022, the Tribunal made a determination under The Tenancy Deposit Schemes (Scotland) Regulations 2011 as amended by the Tenancy

Deposit Schemes (Scotland) Amendment Regulations 2019 (“the tenancy deposit regulations”) and produced a statement of decision (“the decision”) on 4th April 2022. On 5th April 2022, the Tribunal issued its statement of decision.

- ii. The case determined by the Tribunal was somewhat unusual. It involved a tenancy for the Property which had been entered into by the Applicants and the Second Respondent. The issue was whether the Second Respondent was acting as an agent of the First Respondent, who is the registered landlord. The Tribunal determined that, on the balance of probabilities, the First Respondent, as registered landlord and principal, was responsible to comply with the tenancy deposit regulations.
- iii. By email dated 15th April 2022, received by the Tribunal on the same date, the First Respondent 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.
- iv. 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 states that the Applicant is seeking the determination to award the sum of £2,700 to the Applicants to be set aside.

The email of 15th April 2022 sets out two 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.

3. Grounds for Appeal and Reasons for Decision

Tribunals (Scotland) Act 2014

Appeal from First-tier Tribunal

Section 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.

The First Respondent made specific reference to two grounds of appeal but the email adopted a somewhat scatter gun approach and, in fairness to the First Respondent, matters not specifically referred to him as grounds of appeal have been dealt with as such in this Statement of Decision. In doing so the, the Tribunal has attempted to interpret grounds of appeal from what the Applicant has included in his application for leave to appeal. The grounds of appeal specifically founded upon by the First Respondent are as follows:-

- i. The fact that the Second Respondent eventually paid the tenancy deposit into an approved tenancy deposit scheme is proof that it was accepted by him that it was his responsibility to do so.

The Tribunal was entitled, having regard to the written and oral evidence, to come to a view on the First Respondent's responsibility to comply with the tenancy deposit regulations and find that, in relation to the tenancy, the Second Respondent was acting as an agent of the First Respondent.

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

- ii. The Applicants paid the deposit to the Second Respondent who was described as the Landlord's agent in the private rental tenancy agreement which was entered into for the Property. The Applicants thought that the Second Respondent was the landlord. The First Respondent was given no opportunity to comply with the tenancy deposit regulations as he had no knowledge of any deposit.

The Tribunal was entitled, having regard to the written and oral evidence, to come to a view on the arrangement between the First and Second Respondents and that the First Respondent as registered landlord had a responsibility to comply with the tenancy deposit regulations.

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

The following are what the Tribunal considers the Applicant is advancing as grounds of appeal:

- iii. The Second Respondent was not consulted or pursued and that fact that he was not constitutes a miscarriage of justice.

The Applicants were unable to provide an address for the Second Respondent. Service was made on him by advertisement in terms of Rule 6A of the Procedure Rules. The Second Respondent did not participate in the Tribunal proceedings. The Tribunal was entitled, on the evidence, to find that the First Respondent, as landlord, was responsible for complying with the tenancy deposit regulations.

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

- iv. The Applicant had no knowledge of the tenancy deposit and requested that bank details be checked to clarify to whom the deposit had been paid.

The Tribunal was entitled, on the evidence, to determine that the bank account into which the tenancy deposit had been paid was irrelevant. It determined that the Second Respondent was acting as agent of the Applicant.

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

- v. The Tribunal should have checked that Umega had been the sole agents of the Applicant for some time and not the Second Respondent.

If the Applicant considered that evidence regarding his letting agents was significant then he should have led evidence in this regard. It is not for the Tribunal to make enquiry. He could have submitted written evidence or had witnesses provide oral testimony. He chose not to do so. The Tribunal distinguished between letting agents and the principal/agent relationship which it found to exist between the First and Second Respondents.

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

- vi. The Tribunal should not have taken into account any evidence about the condition of the Property.

The Tribunal stated that the condition of the Property was not relevant to the Application which it had to determine but it was entitled to consider the evidence the Applicant gave in relation to his obligations to maintain the Property to the repairing standard when assessing his credibility.

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

- vii. The Tribunal took no regard of the emails lodged by the Applicant.

The Tribunal took account of the email submissions of the Applicant and this is referred to in paragraph 28 of the Statement of Decision.

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

The Tribunal does not consider that the appeal as set out by the Applicant is arguable and, in coming to that view, had regard to the test referred to in *Czerwinski v HMA 2015 SLT*: *“that the appeal can properly be put forward on the professional responsibility of counsel.”*

The Tribunal determined that there is no merit in the Applicant’s arguments for permission to appeal and that they raise no valid point in law to be determined by the Upper Tribunal.

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.



Martin J. McAllister,
Legal Member
3rd May 2022